

CANADA / JUDGMENT

Herrera Delgadillo v. Canada (Citizenship and Immigration)

2025 FC 776

COURT

Federal Court

DECIDED

29 April 2025

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Herrera Delgadillo v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-04-29 Neutral citation 2025 FC 776 File numbers IMM-12905-23 Decision Content Date: 20250429 Docket: IMM-12905-23 Citation: 2025 FC 776 [ENGLISH TRANSLATION] Ottawa, Ontario, April 29, 2025 PRESENT: The Honourable Madam Justice Ngo BETWEEN: ENRIQUE HERRERA DELGADILLO MONICA CAROLINA ACOSTA ESPARZA JOSE ENRIQUE HERRERA ACOSTA DANIELA GUADALUPE HERRERA ACOSTA ANA PAOLA HERRERA ACOSTA KEYLA NOEMI HERRERA ACOSTA ANGEL DAVID HERRERA ACOSTA Applicants and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Background [1] The applicants, Enrique Herrera Delgadillo [principal applicant], his spouse Monica Carolina Acosta Esparza and their children [collectively the applicants] are seeking judicial review of a decision of the Refugee Appeal Division [RAD] with respect to a claim for refugee protection [Decision]. The RAD confirmed the decision of the Refugee Protection Division [RPD], which rejected the claim for refugee protection under sections 96 and 97 of the Immigration and Refugee Protection Act, LC 2001, c 27 [IRPA], given that there was an internal flight alternative [IFA] available to them.

[2] For the reasons that follow, the application for judicial review is allowed. The RAD's Decision regarding the alleged breach of procedural fairness before the RPD was not reasonable, as the decision maker's reasons did not validly address the central issues and concerns raised by the applicants. II. Facts [3] The applicants are citizens of Mexico. They fear persecution by a client [Client] of the principal applicant [Client]. In March 2019, the principal applicant, an automobile mechanic, began repairing and modifying automobiles for the Client. The principal applicant later discovered that his Client was a member of the criminal group the Cartel Jalisco Nueva Generacion [CJNG]. The principal applicant then reportedly received an offer to work exclusively for the Client, which the principal applicant pretended to accept for fear of reprisals. Following this proposal, the applicants relocated to other cities in Mexico, where they continued to receive threats from the CJNG.

- [4] On December 18, 2019, the principal applicant arrived in Canada and claimed refugee protection. Later, on January 5, 2022, the principal applicant's spouse and their children submitted their claims for refugee protection.
- [5] On November 25, 2022, the applicants failed to appear at their first hearing before the RPD. Then, on January 27, 2023, at their second hearing date, the applicants requested a postponement of the hearing in order to find counsel to represent them. The RPD granted a postponement of the hearing until March 24, 2023, and confirmed to the applicants that their representative could request a change of hearing date if necessary.
- [6] On March 24, 2023, the applicants appeared at the hearing before the RPD without representation by counsel. When the RPD asked the principal applicant if he was ready to proceed, he confirmed his willingness to begin the hearing. The proceedings took place with a translator present.
- [7] On May 10, 2023, the RPD rejected the refugee protection claim on the grounds that the applicants had a viable IFA in Mexico. The applicants appealed to the RAD alleging, among other things, that the RPD had breached procedural fairness by proceeding with the hearing when they were not represented by counsel and that it [translation] "acted very hastily without seeking to ascertain whether the appellants could properly understand the conduct of the hearing". In addition, the applicants alleged that the decision was unreasonable with respect to its IFA finding.
- [8] On September 22, 2023, the RAD confirmed the RPD's decision. The RAD rejected the allegation of breach of procedural fairness and breach of the rules of natural justice. The RAD determined that the right to representation by counsel is not an absolute right and that the applicants had several opportunities to avail themselves of that right, which they did not do. The RAD also confirmed the RPD's finding regarding the existence of an IFA. That RAD Decision is the subject of this judicial review. III. Issue [9] At issue is whether the RAD Decision was unreasonable in its analysis of the alleged breaches of procedural fairness before the RPD and the IFA finding.
- [10] The parties agree that the Court must review the merits of the Decision on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16–17, 25 [*Vavilov*]). I agree with the parties that the standard of reasonableness applies to the reasons for the Decision.
- [11] On judicial review, a reviewing court must determine whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility: *Vavilov* at para 99. A reasonable decision in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision could be considered as unreasonable if the administrative decision maker has misapprehended the evidence on the record (*Vavilov* at paras 125, 126). The party challenging the decision has the burden of showing that the decision is unreasonable (*Vavilov* at para 100). IV. Analysis [12] The duty to act fairly has two components: (1) the right

to a fair and impartial hearing before an independent decision maker, and (2) the right to be heard (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 14; *Therrien (Re)*, 2001 SCC 35 at para 82). Everyone is entitled to a full and fair opportunity to present their case (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 28). The nature and extent of the duty are “eminently variable”. Thus, whether a decision is procedurally fair must be determined on a case-by-case basis (*Baron v Canada (Attorney General)*, 2023 FC 1177 at paras 22–24).

- [13] According to the applicants, RPD did not respect their wish to be represented by counsel at the hearing. They submit that the RPD should have explained the repercussions of choosing to act without representation by counsel and adapted the hearing accordingly. The applicants were not in a position to understand the seriousness or the evidence required to answer the determinative questions, particularly those relating to the IFA. It was clear from the answers provided by the applicants at the RPD hearing that they did not understand the questions or the process. In their view, the RPD acted very hastily and without verifying the applicants’ understanding of the hearing process and the evidence submitted.
- [14] Accordingly, the applicants submit that the RAD erred in its finding that the RPD had not breached procedural fairness or the rules of natural justice, as it was limited to deciding only the arguments on the right to be represented by counsel. It did not rule on the breach of procedural fairness in the conduct of the hearing by the RPD, or on the lack of explanations during questions about the IFA, the determinative issue in this case. This argument was raised by the applicants in their appeal memorandum to the RAD, and the latter should have responded to it.
- [15] The respondent argues that the applicants explicitly waived the right to counsel, and that the RPD asked clear and simple questions. The applicants knew the case to meet and had a full and fair opportunity to respond.
- [16] I agree with the applicants’ submissions.
- [17] The Decision under review analyzed the argument that “the RPD violated procedural fairness and the rules of natural justice by going ahead with the hearing when they were not represented by counsel”. The RAD then turned to the chronology of events leading up to the hearing on March 24, 2023. It rightly concluded that the right to be represented by counsel is not an absolute right (*Ait Elhocine v Canada (Citizenship and Immigration)*, 2020 FC 1068 at para 15).
- [18] While the right to counsel is not absolute, what is absolute is the right to a fair hearing. To ensure that a hearing proceeds fairly, an applicant must be able to “participate meaningfully” in the proceedings (*Gabor v Canada (Citizenship and Immigration)*, 2022 FC 150 at para 40).

- [19] The applicants had argued on appeal before the RAD that the RPD's conclusion was erroneous due to their lack of understanding of the technical aspect of the IFA issues, and that they were unable to properly challenge the IFA. The transcript of the hearing before the RPD shows that it identified credibility and the IFA as determinative elements. Discussions about the IFA were limited to around ten minutes at the end of the hearing, and the questions were of a general nature.
- [20] In challenging the finding that there was an IFA available to them, the applicants argued before the RAD that the conduct of the hearing before the RPD led to responses from the applicants that demonstrated a lack of understanding with regard to the IFA criteria. In other words, one of the applicants' key arguments concerned the unfair manner in which the RPD approached the issues in respect of the IFA, which did not allow the applicants to "participate meaningfully" in the hearing. However, the Decision is silent on this point. The RAD was required to address this central issue.
- [21] The principles of justification and transparency require that an administrative decision maker's reasons meaningfully account for the central issues and concerns raised by the parties. A decision maker's failure to meaningfully grapple with the key issues or central arguments raised may call into question whether the decision maker was actually alert and sensitive to the matter before it (Vavilov at paras 127–128).
- [22] The respondent attempted to describe the sequence of questions and the proceeding conducted by the RPD as being sufficiently clear and simple so as to enable the applicants to understand the process and the issues related to the IFA. However, this analysis is nowhere to be found in the Decision. The IFA analysis ought to have been made on the basis of the proceedings before the RPD, given that the latter was linked to the allegations of breach of procedural fairness. I cannot consider the respondent's explanations to fill in the RAD's reasons.
- [23] The Decision must therefore be set aside and the matter referred back to the RAD for redetermination by a different decision maker, who will review the course of the proceeding before the RPD and its findings with regard to the IFA. V. Conclusion [24] The Decision does not meet the requirements of justification, intelligibility and transparency. The application for judicial review is therefore allowed.
- [25] No question for certification was raised by the parties, and I agree that none arises. JUDGMENT in IMM-12905-23 THIS COURT'S JUDGMENT is as follows: The application for judicial review is allowed. The RAD's decision is referred back to the RAD for redetermination by a new decision maker, taking into account the reasons set out in this Decision. There is no question to certify. "Phuong T.V. Ngo" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-12905-23 STYLE OF CAUSE: ENRIQUE HERRERA DELGADILLO ET AL. v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: MONTREAL, QUEBEC DATE OF HEARING: APRIL 8, 2025 JUDGMENT AND REASONS BY: Ngo J. DATED: APRIL 29, 2025 APPEARANCES: Jorge Calasurdo FOR THE

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