

CANADA / JUDGMENT

MB9-11475

COURT

Refugee Appeal Division

DECIDED

28 July 2020

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RAD File No. / No de dossier de la SAR : MB9-11475 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Person who is the subject of the appeal XXXX XXXX XXXX XXXX
Personne en cause Appeal considered / heard at Montréal, Quebec Appel instruit / entendu à Date
of decision July 28, 2020 Date de la décision Panel Mokhtar Lamani Tribunal Counsel for the
person who is the subject of the appeal Felipe Morales Conseil de la personne en cause
Designated representative N/A Représentant(e) désigné(e) Counsel for the Minister N/A Conseil
du ministre REASONS FOR DECISION OVERVIEW

- [1] XXXX XXXX XXXX XXXX, a citizen of Mexico, is appealing against the decision of the Refugee Protection Division (RPD) dated May 14, 2019, rejecting her claim for refugee protection on the grounds of an internal flight alternative (IFA) and a generalized risk.
- [2] She alleges that the RPD erred in its decision by making the following errors:¹
- The RPD [translation] "committed an appeal"² in denying the appellant the opportunity to present new evidence.
 - The RPD erred in its consideration of Tab 1.5 of the National Documentation Package (NDP).
 - The RPD failed to consider tabs 5.7 and 5.8 of the NDP.
 - The RPD erred in stating that the danger the appellant would face is restricted to a limited geographic area.
- [3] The appellant is asking the Refugee Appeal Division (RAD) to grant her refugee status or to refer the matter to a differently constituted RPD panel.³
- [4] The appellant presented new evidence in support of her appeal and is requesting that an oral hearing be held before the RAD.⁴
- [5] As was the case for the RPD, the determinative issues for the RAD are the IFA and the generalized risk.

DETERMINATION

- [6] The RAD confirms the determination of the RPD and dismisses the appeal.

BACKGROUND

- [7] According to her Basis of Claim Form (BOC Form), the appellant had owned XXXX XXXX XXXX since 2015, and she alleges that, in July 2017, people demanded that she pay a ransom of XXXX XXXX XXXX pesos per month to protect her.
- [8] Since she refused to pay, they began to threaten her, and on August 8, they vandalized her salon. She went to the police, but was unable to file a complaint. She did not seek refuge elsewhere due to corruption in her country.
- [9] On XXXX XXXX XXXX 2018, she left Mexico for Canada and claimed refugee protection. NEW EVIDENCE Evidence presented by the appellant is rejected
- [10] Under the Immigration and Refugee Protection Act⁵ (IRPA), I can only allow evidence:
- that arose after the RPD rendered its decision; ii. that was not reasonably available at the time of the decision; or iii. that the person could not reasonably have been expected in the circumstances to have presented to the RPD before the decision was rendered.
- [11] If the evidence meets one or more of these requirements, I must decide whether the evidence is new, credible and relevant before accepting it.⁶
- [12] The appellant submitted three new pieces of evidence referred to in subsection 110(4) of the IRPA, namely:
- An undated statement from XXXX XXXX XXXX XXXX, the appellant's son.
 - An undated statement from XXXX XXXX XXXX XXXX, the appellant's daughter.
 - A statement dated April 20, 2019, from XXXX XXXX XXXX XXXX, the appellant's neighbour.
- [13] The onus is on the appellant to make full and detailed submissions in her memorandum about how any proposed new evidence meets the requirements of subsection 110(4) of the IRPA and how that evidence relates to the appellant.
- [14] In her memorandum,⁷ the appellant claims that the three statements corroborate her legitimate fear of reprisals from the individuals who threatened her, given that the risks and threats continued after she left Mexico.
- [15] The three documents include the same allegations the appellant described in her account and in her testimony at the hearing before the RPD.
- [16] These documents had been previously brought before the RPD. On the day of the hearing (April 25, 2019), after the RPD noted that these documents were in Spanish only, it reminded the appellant's counsel that documents are normally expected to be presented 10 days before the hearing. He replied that both he and his client were well aware of that, but that he only had the opportunity to see them the previous day⁸ and he assured they would be translated and sent to the RPD within a week.

- [17] Later on in the hearing, when the appellant stated that she wanted to introduce these documents as new evidence, the RPD had the following discussion with the counsel:⁹
- RPD: How much time do you think you will need for the translation?
 - Counsel: It could be done fairly quickly; there is a translator at my office, but she was unfortunately unable to do it yesterday. I'm certain that once I give it to her, she can have it done in 48 hours, so rather quickly.
 - RPD: If I give you until next Thursday (one week) to have the documents at our office on Monday morning.
 - Counsel: Plenty of time.
 - RPD: Thank you.
- [18] The RPD indicated in its reasons¹⁰ that [translation] "at the hearing, the applicant and her counsel asked to submit three letters of support (from her daughter, her son, and her friend XXXX) regarding the alleged facts. The panel granted one week to do this and set the deadline for May 2, 2019. Despite a reminder from the registry after the agreed deadline, the panel never received the documents in question and was therefore unable to analyze them."
- [19] Subsection 110(4) does not provide the opportunity to complete a deficient record submitted before the RPD, but to allow for errors of fact, errors in law or mixed errors of fact and law to be corrected.¹¹
- [20] This evidence was reasonably and easily available, and should have been translated and presented before the RPD.
- [21] Consequently, since these documents do not meet the requirements of subsection 110(4) of the IRPA, they will not be accepted as evidence. Holding of an oral hearing before the Refugee Appeal Division
- [22] The RAD appeal process is generally a paper-based process. Prior to holding an oral hearing, new evidence must be accepted on appeal in accordance with subsection 110(4) of the IRPA, and the new evidence, if accepted, must raise a serious issue with respect to the credibility of the appellant, must be central to the decision with respect to the refugee protection claim, and would justify allowing or rejecting the refugee protection claim.
- [23] Since no new evidence was accepted, there is no reason to hold an oral hearing in this case.
- STANDARD OF REVIEW
- [24] The RAD reviews RPD decisions by applying the correctness standard of review after carrying out its own analysis of the record. The exception to this rule is where the RPD enjoys a meaningful advantage in assessing credibility.¹² That said, the RAD's role is to determine whether the RPD did indeed err as the appellant claims.
- [25] The RAD applied the correctness standard in this case.

ANALYSIS

- [26] The appellant submits that the RPD made errors in paragraphs 12, 13 and 21 for the non-admitted documents, in paragraph 11 for its interpretation of the National Documentation Package (NDP), and in paragraph 18 for restricting the risk to a limited area.¹³
- [27] Although the appellant's memorandum includes the areas where the RPD's errors can be found, it unfortunately does not include full and detailed submissions regarding these errors in accordance with subparagraph 3(3)(g)(i).
- [28] This memorandum consisted merely of criticisms drafted in general terms without any relevant and detailed explanation as to the RPD's errors.
- [29] The RAD conducted its assessment of the RPD's decision and the evidence. Opportunity to present new evidence
- [30] The RPD was unable to analyze the three letters (from the appellant's children and neighbour) in support of the refugee protection claim because they were submitted only after the RPD had rendered its decision.
- [31] The appellant criticizes the RPD for denying her the opportunity to present new evidence that was sent on May 14, 2019. She submits that this evidence would support her statements on the ongoing threats after she left Mexico.¹⁴
- [32] With respect, it was not the RPD in this case who denied this opportunity to the appellant, but rather her counsel who, after presenting the evidence late and without being translated into one of the two official languages, and after agreeing with the RPD that the documents could be presented no later than May 2, 2019, failed to meet his obligations despite the registry's reminder sent after the agreed timeframe.
- [33] Unfortunately, the counsel sent the translations on May 14, 2019, twelve days after the agreed timeframe. Since the decision had been signed, the registry was required to send him a note¹⁵ informing him that the documents would be returned because the RPD's decision had been rendered prior to receiving the documents.
- [34] The Refugee Appeal Division Rules (RAD Rules) are quite clear, and the RPD simply drew conclusions based on the evidence available to it and in accordance with the IRPA and the rules in effect.
- [35] The RPD did not err in its determination. Consideration of the National Documentation Packages
- [36] The RPD concluded that, despite the appellant's fears, especially concerning the state of Tlaxcala, the panel is of the opinion that she could move elsewhere in Mexico. First, according to the documentary evidence, Tlaxcala and Campeche are among the most peaceful states in the country and have very low homicide rates. In addition, the rate of extortion in both of these states is among the lowest in Mexico.¹⁶

- [37] To arrive at this conclusion, the RPD relied on tabs 1.5, 7.5, 9.5 and 7.11 of the NDP on Mexico from March 29, 2019.
- [38] The appellant claims that the RPD erred in its consideration of Tab 1.5 of the NDP since the document indicates at pages 16, 23 and 34 that, despite the low numbers, there has been a significant increase in the murder of women in Mexico, including the states of Tlaxcala and Campeche,¹⁷ and that the RPD failed to consider tabs 5.7 and 5.8 of the NDP illustrating the state of violence against women in Mexico. The appellant has established that she faced ongoing threats from a group of men who had targeted her.¹⁸
- [39] The RAD considers these arguments to be unfounded.
- [40] First, with regard to the RPD's consideration of Tab 1.5 of the NDP, which was updated in the latest version dated March 31, 2020, and still includes Tab 1.5 entitled Mexico Peace Index 2019, page 9 and onwards clearly show by means of a map that the most peaceful states in Mexico continue to be Tlaxcala and Campeche, along with Yucatán, Chiapas and Hidalgo.
- [41] Second, the report does not mention a significant increase in the murder of women, as suggested by the appellant, and the tables and charts on crime in Mexico clearly show that the states of Tlaxcala and Campeche are still labelled green. The "Violent Crimes" section clearly states that "[r]ates of sexual violence and assault remained similar to those seen in 2017, while the rate of family violence slightly increased."¹⁹
- [42] Lastly, as indicated in the RPD reasons, the appellant testified that in the event of a relocation to Tlaxcala, her persecutors would be able to find her through her identity card, but she did not know if they would have the willingness to do so. She could not come up with other factors that could prevent her from living in Campeche.
- [43] With regard to the failure to consider tabs 5.7 and 5.8 of the NDP, the RAD cannot support that argument.
- [44] Tab 5.7 addresses single women in Mexico, and Tab 5.8 is a report from the United Nations Committee on the Elimination of Discrimination against Women. The RAD is of the opinion that the RPD considered all the documentary evidence, including both of these tabs and Chairperson's Guideline 4. This is reflected in some of its findings.
- [45] The finding at paragraph 24 of the RPD reasons correctly stipulates that the appellant established that she had a strong family network, and had brothers and sisters in various cities in Mexico who also worked in the service industry. She also testified that her children had moved in with an uncle and an aunt, and that they work without any threats of extortion.
- [46] Similarly at paragraph 28, the RPD clearly explained that the appellant had also tried to establish that she was a victim of extortionists because she was a single woman and that single women are often targeted, abducted and victims of violence. When asked if any of the other neighbouring business owners were also women, she stated that she was not certain if

the owners of the stationery store were single, but the dry cleaner was owned by a couple (wife and husband). The RAD concludes that the victims of extortion on her street were targeted more for their geographic location than they were for their gender.

- [47] Moreover, given that the objective evidence is insufficient to establish that the appellant would face more than a mere possibility of persecution or risk to her life for being a woman, the RPD must also consider whether the appellant's evidence is sufficient to establish that she would face a risk above this threshold. That is what the RPD did in this case.
- [48] Consequently, the RPD did not err in concluding that the appellant did not demonstrate, on a balance of probabilities, that she was a victim of extortion because she is a single woman. Did the Refugee Protection Division err in stating that the danger the appellant would face is restricted to a limited geographic area
- [49] The RPD concluded that [translation] "since the alleged incidents all took place in a very restricted and specific geographic area (that is, the main street where XXXX XXXX was located), the applicant was unable to establish, on a balance of probabilities, that her agents of persecution would have the willingness to find her elsewhere in Mexico if she were to return to the country."²⁰
- [50] The appellant argues that the RPD erred in stating that the danger she would face is restricted to a limited geographic area.²¹
- [51] As the RAD mentioned in paragraphs 28 and 29 above, the appellant's memorandum does not specify how this RPD finding is erroneous.
- [52] However, after examining the record and documentation and listening to the recording of the hearing before the RPD, the RAD is of the opinion that this criticism is unfounded and concludes that the appellant failed to demonstrate that there is a serious possibility of persecution or, on a balance of probabilities, that she would be subjected to a risk to her life or to a risk of cruel and unusual treatment or punishment should she return to Mexico.
- [53] At the hearing, the appellant mentioned several times that what she feared in her country was crime and corruption, which prevented her from moving elsewhere prior to seeking Canada's protection. This is what prompted the RPD to conclude that it was a generalized risk in Mexico that is not out of line with the risk also faced by the entire population (paragraph 27 of the RPD reasons, uncontested).
- [54] The RPD's other uncontested reasons-including the conclusion regarding the reduced yet ongoing presence at the XXXX XXXX (paragraph 19); the fact that her encounters with the agents of persecution were only on the main street where XXXX XXXX is located (paragraph 17); the fact that her home is located very close to XXXX XXXX, yet the appellant was never threatened at her home (paragraph 15); or her assailants' profile or behaviour (paragraph 14)-demonstrate that the danger the appellant faces is restricted to a limited geographic area.

- [55] After analyzing these other uncontested findings by the RPD (agents' profiles, location of threats, reduced yet ongoing presence at the XXXX XXXX, the passage of time and the reasonableness of the IFA), the RAD considers that they are correct.
- [56] In short, after analyzing the entire record and considering the appellant's arguments, the RAD is of the view that the RPD did not err in its assessment of the appellant's refugee protection claim and did not commit errors of fact or law compromising the merits of its decision.
- [57] The RAD reaches the same determination in that this appeal must be dismissed.

CONCLUSION

- [58] Pursuant to paragraph 111(1)(a) of the Immigration and Refugee Protection Act, the RAD dismisses the appeal and confirms the determination that the appellant is neither a Convention refugee nor a person in need of protection. (signed) Mokhtar Lamani Mokhtar Lamani July 28, 2020 Date 1 P-2, appellant's record, appellant's memorandum, at paragraph section (i). 2 Ibid., terminology used by the appellant, first paragraph of section (i). 3 Ibid., at paragraph section (iv). 4 Ibid., at paragraphs sections (iii) and (v). 5 Subsection 110(4) of the Immigration and Refugee Protection Act. 6 Canada (MCI) v. Singh, 2016 FCA 96; Canada (MCI) v. Raza, FC 385. 7 P-2, appellant's record, appellant's memorandum, at paragraph section (iii). 8 Audio recording of the hearing before the Refugee Protection Division (RPD) on April 25, 2019, 00:10:23 et seq. 9 Ibid., 00:16:20 et seq. 10 SPR-1, RPD record, RPD reasons, at paragraph 21. 11 Singh 2016 FCA 96, at paragraph 54. 12 Canada (MCI) v. Huruglica, 2016 FCA 93, Rozas Del Solar v. Canada (MCI), 2018 FC 1145. 13 P-2, appellant's record, appellant's memorandum, section (ii), at page 26. 14 P-2, appellant's record, appellant's memorandum, section (i), the three first points, at page 26. 15 P-2, appellant's record, at digital page 26. 16 SPR-1, appellant's record, RPD reasons, at paragraph 11, at page 6. 17 P-2, appellant's record, appellant's memorandum, section (i), fourth point. 18 Ibid., section (i), fifth point. 19 SAR-1, National Documentation Package on Mexico of March 31, 2020, Tab 1.5: Mexico Peace Index. Institute for Economics and Peace. April 2019, at page 22. 20 SPR-1, RPD record, RPD reasons, at paragraph 18. 21 P-2, appellant's record, appellant's memorandum, section (i), sixth point.

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Prepared on 26 October 2026 · Esheria