

CANADA / JUDGMENT

VC1-03043

COURT

Refugee Appeal Division

DECIDED

21 September 2021

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RAD File / Dossier de la SAR : VC1-03043 VC1-03044 Private Proceeding / Huis clos Reasons and Decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Toronto, ON Appel instruit / entendu à Date of decision 21 September 2021 Date de la décision Panel T. Card Tribunal Counsel for the persons who are the subject of the appeal Jhadira Ramos Conseil des personnes 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 (the "Principal Appellant") and XXXX XXXX XXXX XXXX (the "Spousal Appellant") are citizens of Mexico and are appealing a decision of the Refugee Protection Division (RPD) denying their claims for refugee protection.

DETERMINATION

- [2] The Appeals are dismissed. BACKGROUND AND ALLEGATIONS
- [3] The Appellants are citizens of Mexico. The Principal Appellant fears a criminal figure named XXXX XXXX, who has connections with the Cartel Jalisco Nueva Generacion (CJNG). The Principal Appellant's father, who was a XXXX, was killed in Guadalajara at the behest of XXXX XXXX in 2008.
- [4] In 2012, the Principal Appellant signed onto a denunciation of his father's murder. As a result, other family members of the Principal Appellant were killed, and the Principal Appellant fears for his life as a result.
- [5] The Principal Appellant originally went to Canada in XXXX 2017, with a one month return to Mexico in XXXX 2018. He then went to Canada a second time.
- [6] In 2018 or 2019, the Principal Appellant met the Spousal Appellant in Canada. The Appellants got married in Mexico on XXXX XXXX 2019. The next day, a funeral wreath with the Principal Appellant's name and a pig's head was left on the doorstep of his wife's home in Guadalajara, Mexico.

- [7] The Appellants came to Canada and made their refugee claims. The Spousal Appellant's claim is entirely based on that of the Principal Appellant's. The RPD rejected the Appellants' claims on the basis they had viable Internal Flight Alternatives (IFAs) in Campeche, and Merida, Yucatan. ADMISSIBILITY OF EVIDENCE SUBMITTED ON APPEAL
- [8] In support of this appeal, the Appellants proposed the admission of the following documents as new evidence:
- (a) Detention Review for XXXX XXXX.1
 - (b) Trial schedule and disclosure record.2
 - (c) Article "After 13 years, still no justice for the crime", Noe Magallon, dated 13 March 2021.3
 - (d) Article "Cocaine of the Jalisco Nueva Generacion Cartel" dated 14 September 2019.4
 - (e) Picture labelled "They arrest an alleged member of the Jalisco Nueva Generacion Cartel in Campeche."5
 - (f) Article "Police", Dismar Herrera, dated 3 March 2021.6
 - (g) Article "An Alleged member of the Jalisco Nueva Generacion Cartel", from Campeche.com.mx.7
 - (h) Article "Security is in danger in Yucatan, cartel tends narconexos", from La Verdad, dated 2020/07/06.8
 - (i) Article "3 Ex-military Members of the New Generation Jalisco Cartel/They Carried Weapons in Their Car for Exclusive Use of the Armed Forces", from El Gran Kanxoc, dated 2019.9
 - (j) Article "Cartel del Golfo and the CJNG, the new drug brotherhood in Veracruz; DEA and FIU lurk", by Luis Ferrer, dated 13 April 2021.10
 - (k) Article "'La Firma', the violent boss of the CJNG, in the crosshairs of the US", by Rodrigo Gutierrez Gonzalez, dated 06/04/2021.11
 - (l) Editorial Article "Security, short-term problem", from La Jornada Maya, dated 21 July 2020.12
 - (m) Article "Historians and Colombians: the succession of the CJNG", from www.excelsior.com.mx.13
 - (n) DHL delivery receipt dated 10 June 2021.14
- [9] S.110(4) of the Immigration and Refugee Protection Act (IRPA)¹⁵ provides that the Appellants may present only evidence that arose after the rejection of their claims or that was not reasonably available, or that they could not reasonably have been expected¹⁶ in the circumstances to have presented, at the time of the rejection. It is for the Appellants to make full and detailed submissions in his Memorandum about how any proposed new evidence meets the requirements of s.110(4) and how that evidence relates to the Appellants.¹⁷

- [10] In addition, if the new evidence meets one of the explicit legislative factors in s.110(4), then the second step of the analysis is for the Refugee Appeal Division (RAD) to apply the adapted Raza factors endorsed in Singh.¹⁸ In Singh, the Federal Court of Appeal held that the RAD should assess the admissibility of the new evidence for its credibility, relevance and newness. The RAD is not to consider the fourth Raza factor of materiality to the admission of new evidence, which is a consideration for s.110(6) and the request for an oral hearing.¹⁹ Items a, b and n rejected
- [11] Items a and b provided date back to 2008 which predates the RPD decision date. The Appellants have argued that they were attempting to retrieve these documents at the time of the RPD hearing, but did not receive it until 10 June 2021, after the RPD decision. Item n is the DHL receipt showing the date the proposed new documents were received.
- [12] In reviewing the RPD Record, I note that there was no submission by the Appellants either orally or in writing that they were still attempting to get additional documentation as of the time of the RPD Hearing. I also note that the Appellants made no application to adjourn the hearing pending the arrival of this documentation.
- [13] The lack of evidence beyond the statement in the Memorandum saying that the Appellants were attempting to get this evidence places me in a difficult position in determining whether or not this evidence can be considered as "not reasonably available" as of the date of the RPD Decision. In this case, I find that a single allegation made after the fact in the Memorandum that the Appellants were attempting to get these documents is not enough to establish that the documents were not reasonably available at the time of the rejection.
- [14] The Appellants have also not explained why the documents were not available before the RPD Rejection, which would be needed to assess whether he could not reasonably have been expected to have provided the documents at that time. The Appellants provided no explanation as to why it took them so long to obtain these documents, nor even when they began to attempt to get them, which would be needed as part of this assessment.
- [15] I note that it is for the Appellants to establish how the proposed new documents meet the requirements of s.110(4), and not for me to fill in the blanks as to possible explanations. In light of the absence of evidence, I find the proposed documents do not meet the requirements of s.110(4) of the IRPA and are rejected. Items c to m rejected
- [16] Items c to m are various articles relating to the activities of the CJNG. A number of the articles predate the RPD Decision, with others post-dating it. Other articles are not dated. The Appellants have alleged that these undated articles were published after the RPD Decision, but has provided no proof of this.
- [17] It should be noted that for a number of articles, the visible date on them relates not to the date of publication, but instead to the date they were printed. This can be seen, for example, in relation to Article d, which the Appellants allege was published on 16 April 2021, following the date on the top right corner of Page 107 of the Appellants' Record. However, if

we look on the left side, the article also says "Published 2 years ago". An examination of the web address for the article at the bottom of Page 108 shows "2019/09/14" as part of the address, or put another way, 14 September 2019, which is 2 years before the date it was printed. This is how I can determine the actual publishing date for some of these articles. Others have no publishing date on them. The dates that can be visible include times, not just dates, and are in the same position on the page in the same font as that in Article d. This again indicates dates and times of printout, not date of publication.

- [18] In any case, even if all of these articles were considered as meeting the requirements of s.110(4) of the IRPA, they would still fail the relevance Singh and Raza factor. The Appellants' agent of persecution is XXXX XXXX, not the CJNG. The relevance of the CJNG in this case is the allegation by the Appellants that XXXX XXXX would use the CJNG's resources, through his connections to them, to find the Appellants and kill and/or torture them anywhere in Mexico. That allegation will be analysed below. In the meantime, the proposed new evidence does nothing to address that allegation.
- [19] I do note that the RPD did make reference to the CJNG conducting fewer activities in the proposed IFAs and that these proposed new documents are meant to address this finding. However, I do not find this to be a determinative issue in this case, as I shall explain below.
- [20] I therefore find that the proposed new evidence does not meet the requirements of Singh and Raza and are all rejected. NO ORAL HEARING
- [21] The RAD may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection 110(3) of the IRPA that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, is central to the decision with respect to the refugee protection claim, and, if accepted, would justify allowing or rejecting the refugee protection claim.²⁰
- [22] As no new evidence has been accepted, the requirements of subsection 110(6) of the IRPA have not been met, and an oral hearing cannot be held. ISSUES IN APPEAL
- [23] The Appellants argue the following issues in their appeals:
- a. The RPD erred finding there to be viable IFAs in Mexico available to the Appellants.
 - b. The RPD erred in its findings regarding the ability of the Agent of Persecution to locate and harm the Appellants outside of Guadalajara within Mexico.
 - c. Credibility as it relates to IFA.
- [24] I find that the determinative issues in this appeal are:
- a. IFA to either Campeche, or Merida.
 - b. Credibility as it relates to IFA. RAD ANALYSIS

- [25] I have conducted an independent analysis of the evidence concerned, including reviewing the record of the RPD hearing, as well as considering the Appellants' Memorandum,²¹ the RPD Decision,²² and the Principal Appellant's Basis of Claim (BOC).²³ No s.96 nexus
- [26] The RPD found that the Appellants' fear of harm was based on criminality and had no nexus to any Convention²⁴ ground. On that basis, the RPD found that the Appellants were therefore not Convention Refugees under s.96 of the IRPA. The Appellants conceded on this point at the RPD.
- [27] The Appellants made no arguments against this finding, and therefore have conceded this finding.
- [28] In making my independent analysis, I can find no obvious error in this finding of the RPD.
- [29] I therefore find the RPD was correct in this finding and uphold it. The Appellants are not Convention Refugees under s.96 of the IRPA. Appellants have not established XXXX XXXX as having sufficient influence within CJNG
- [30] The Appellants have submitted that the RPD erred in finding that XXXX XXXX is not as connected to CJNG as alleged, and that as a result, XXXX XXXX does not have the resources to harm them anywhere in Mexico, including in the proposed IFAs.
- [31] The Appellants argue that "it is neither relevant, nor a statutory nor precedential test, that XXXX XXXX be a nationally recognized figure identified in any of the articles...[in] the NDP (National Documentation Package)."²⁵ The Appellants go on to argue that "...because XXXX XXXX is not identified as a principal leader of the CJNG, that he does not have resources at his disposal to target the claimants."²⁶
- [32] I do not concur with the Appellants' submissions. The RPD was not creating a new test requiring particular agents of persecution to be named in an NDP, as the Appellants appear to be implying. Rather, the RPD was pointing out that there is insufficient evidence to show that XXXX XXXX, as the named agent of persecution, has the resources to pursue the Appellants to the designated IFAs. As part of illustrating this, the RPD set out the steps taken to try to see if there was sufficient evidence, both in terms of that produced by the Appellants, as well as anything in the NDP. I find the RPD was correct in this analysis.
- [33] The evidence available can show, at best, that XXXX XXXX has a connection to the CJNG. However, the evidence does not support the allegation that XXXX XXXX connection is sufficiently strong that he can use the CJNG's resources for his own personal purposes to pursue the Appellants.
- [34] In particular, the fact that the Principal Appellant was able to live in Guadalajara for a significant period of time between 2014 and XXXX 2019 without incident appears to undermine the assertion that he would be at risk of harm from CJNG. The Principal Appellant's ability to live at the flight school shows further limits to the CJNG's power.

- [35] I have also considered the Principal Appellant's argument that he would intend to file a new denunciation "...at a time and from a place where he feels safe to do so."²⁷ The Appellants argue that this factor "...is not merely speculative...".
- [36] While the intent may not be speculative, the reality of such action is very much speculative. The Appellants have been submitting, effectively, that they would never feel safe, indicating no clear time that such action would ever be taken. The standard of proof to consider here is balance of probabilities, and I am not satisfied that the Principal Appellant's intent is sufficient to satisfy that standard of proof. XXXX XXXX lacks means or lacks interest in finding the Appellants
- [37] The RPD's IFA findings are not simply based on the lack of evidence in the NDP. The RPD also correctly pointed out that for long periods of time, the Principal Appellant lived in Mexico without incident. In particular, following the murder of the Principal Appellant's uncle in 2014, the Principal Appellant did not have any incidents with XXXX XXXX or the CJNG until XXXX 2019, five years later. I note this did include periods of time living in Canada, but even taking this into account, there were still no reported problems whether he was living inside or outside Mexico during that time.
- [38] The RPD also referred to the fact that the Principal Appellant's mother has never been targeted by XXXX XXXX or the CJNG, something acknowledged by the Principal Appellant. The Principal Appellant stated that because she had contact with "no one", and that her houses were held under other names and she did not work, this meant she was not brought to the attention of either XXXX XXXX or the CJNG.
- [39] The RPD correctly pointed out that that argument could not be entirely accurate, given the mother's contact with the Principal Appellant. The RPD also correctly pointed out that this demonstrates either a lack of motivation, or a lack of ability, to find other family members of the Appellants.
- [40] Furthermore, the Appellants' argument in the Memorandum that "an abundance of public and national databases carrying personal records exist[ing] in Mexico" as proof that XXXX XXXX could find them is undermined by the Principal Appellant's earlier contention that his mother is somehow able to live with these records yet not be found by XXXX XXXX. The only way this contradiction can be reconciled is that there is a lack of interest from XXXX XXXX or the CJNG.
- [41] I am mindful of the 2019 incident regarding the threatening wreath and pig's head at the Appellants' wedding. This is certainly a disturbing incident. However, I note that it is also the only incident the Appellants have reported regarding XXXX XXXX or the CJNG. The Principal Appellant's mother has still not reported any threats this entire time.
- [42] I am also mindful that the Appellants must show, on a balance of probabilities, that they would face a risk to life, risk of torture or cruel and unusual treatment or punishment in the proposed IFAs, given that only s.97 of the IRPA is left available to them.

- [43] In weighing all of the evidence, I find that the RPD was correct in finding that the risk to the Appellants does not meet the standard of balance of probabilities. Campeche and Merida are safe IFAs
- [44] When considering all the evidence available, I find that the RPD was correct in finding Campeche and Merida to be safe IFAs available to the Appellants, and upholding this finding.
- [45] I find that the RPD was correct in finding that XXXX XXXX lacks either ability or motivation in finding the Appellants in the proposed IFAs.
- [46] I find that the RPD was correct in finding that CJNG lacks motivation in finding the Appellants in the designated IFAs. Campeche and Merida are reasonable IFAs
- [47] I note the RPD correctly points out that in regards to the reasonableness prong of the IFA test "... the Federal Court of Appeal has set a very high threshold for the unreasonableness prong of the IFA test. Indeed, 'it requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant.'"28
- [48] The Appellants have submitted that as the Principal Appellant lost all of his personal assets in Mexico, he would have to start again, building a job and career in a new town where they may not know the community. As a result, this would create undue hardship for the Appellants.
- [49] I find that the Appellants submissions on hardship would equally apply in Canada, with the Appellants also having to start again. Additionally, the Spousal Appellant would have an additional hardship not present in Mexico, which is that the Spousal Appellant would have to learn either English or French as part of living in Canada, which is something they would not have to do in Mexico. I find that the Appellants' submissions on hardship do not meet the high threshold for unreasonableness set by the Federal Court of Appeal.
- [50] I am not persuaded by the Appellants' arguments that the Principal Appellant's age of 30 would make it impossible for him to obtain work, especially given the Principal Appellant's previous education and experience which would still work in his favour, even against a workforce which prefers younger candidates.
- [51] I find that the RPD did not err in its finding that Campeche and Merida are reasonable IFAs and uphold this finding.

CONCLUSION

- [52] After making my independent analysis, I find that the RPD did not err in its overall finding that the Appellants are neither refugees, nor persons in need of protection. The Appellants are not refugees as there is no nexus between the alleged future harm and any of the Convention Grounds stated in s.96 of the IRPA.

- [53] The Appellants are not Persons in Need of Protection under s.97 of the IRPA as they have viable IFAs in Campeche and Merida.
- [54] Pursuant to s.111(1)(a) of the IRPA, the RPD's decision that the Appellants are neither refugees nor persons in need of protection is confirmed.
- [55] The Appeals are dismissed. (signed) T. Card T. Card 21 September 2021 Date 1 Exhibit P-2, Appellants' Record, Pages 79-95. 2 Ibid., Pages 96-100. 3 Ibid., Pages 101-105. 4 Ibid., Pages 106-108. 5 Ibid., Pages 109-110. 6 Ibid., Pages 111-114. 7 Ibid., Pages 116-118. 8 Ibid., Pages 120-133. 9 Ibid., Pages 135-136. 10 Ibid., Pages 138-146. 11 Ibid., Pages 148-154. 12 Ibid., Pages 156-158. 13 Ibid., Pages 160-163. 14 Ibid., Page 164. 15 Immigration and Refugee Protection Act (IRPA), S.C. 2001, c. 27, as amended. 16 In the French version of the IRPA, this phrase is instead the equivalent of "normally have been expected;" see Singh, Parminder v. M.C.I. (F.C., no. IMM-6711-13), Gagné, October 28, 2014, 2014 FC 1022, Paragraph 51. 17 Rule, Immigration and Refugee Board, Refugee Appeal Division Rules, SOR/2012-257, rule 3(3)(g) (iii). 18 Raza v. Canada (Citizenship and Immigration), 2007 FCA 385, cited in Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96, Paragraph 64. 19 Canada (Citizenship and Immigration) v. Singh, [2016] 4 FCR 230, 2016 FCA 96, Paragraph 64. 20 IRPA, s.110(6). 21 Exhibit P-2, Appellants' Record, Pages 61-78. 22 Exhibit RPD-1, RPD Record, RPD Decision, Pages 2-18. 23 Ibid., Exhibit 2.1, Pages 19-28. 24 1951 Convention Relating to the Status of Refugees: Office of the United Nations High Commissioner for Refugees, "Handbook on Procedures and Criteria for Determining Refugee Status", under the 1951 Convention. 25 Exhibit P-2, Appellants' Record, Memorandum, Page 64, Paragraph 16. 26 Ibid., Page 65, Paragraph 17. 27 Ibid., Page 72, Paragraph 68. 28 Exhibit RPD-1, RPD Record, RPD Decision, Page 12, Paragraph 41.
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