

CANADA / JUDGMENT

MC2-07553

COURT

Refugee Appeal Division

DECIDED

17 August 2022

Research copy typeset by Esheria. Not court-issued or certified. A source URL was not supplied in the case record.

RAD File No. / No de dossier de la SAR : MC2-07553

MC2-07554 / MC2-07555

Private Proceeding / Huis clos

Reasons and Decision ? Motifs et décision

[Translation of the original version]

Persons who are the subject of the appeal

XXXX XXXX XXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXXXXXXXXX XXXX XXXX XXXX XXXX

Personnes en cause

Date of decision

August 17, 2022

Date de la décision

Panel

Bianca Eleonora Suciu

Tribunal

Counsel for the persons who are the subject of the appeal

Robin Dejardin

Conseil des personnes en cause

Designated representative

XXXX XXXX XXXX XXXX XXXX

Représentant(e) désigné(e)

Counsel for the Minister

N/A

Conseil du ministre

REASONS FOR DECISION

INTRODUCTION

- [1] The male appellant, XXXX XXXX XXXX XXXX XXXX, his spouse, XXXX XXXX XXXX, and their minor child, XXXX XXXX XXXX XXXX XXXX, citizens of Mexico, are appealing the decision of the Refugee Protection Division (RPD), dated April 25, 2022, to reject their refugee protection claims submitted under sections 96 and 97 of the Immigration and Refugee Protection Act (IRPA).
- [2] The RPD found that the appellants are credible regarding the basis of their refugee protection claims, but that they have an internal flight alternative (IFA) in the cities of Mérida, state of Yucatán, and Campeche, state of Campeche. The claimants are challenging the RPD's analysis and are asking the Refugee Appeal Division (RAD) to allow the appeal, to refer the matter to the RPD for re-determination or to give any directions that the RAD considers appropriate.

DETERMINATION

- [3] After conducting an independent analysis of all the evidence on the record, including the recording of the hearing, I am of the view that the RPD did not err in concluding that the appellants have an IFA in Mexico. Accordingly, I confirm the RPD's determination that the appellants did not establish that they are refugees or persons in need of protection.
- [4] The appeal is dismissed.

OVERVIEW

- [5] In XXXX 2019, the male appellant opened a XXXX in the city of XXXX, in the state of Veracruz, where he was allegedly subjected to extortion by members of the Jalisco Nueva Generacion Cartel (CJNG).
- [6] The male appellant's mother already owned a XXXX in XXXX and paid the cartel a monthly quota of 1,500 pesos. When the male appellant opened a new XXXX location in XXXX, the CJNG went there in XXXX 2019 and told him to pay double the amount demanded.
- [7] On XXXX XXXX, 2019, the male appellant signed a petition led by a business association against organized crime known by the acronym EUCCO. The association was headed by Mr. XXXX XXXX, and the purpose of the petition was to protest the monthly quotas demanded of local shopkeepers.

- [8] On XXXX XXXX, 2019, Mr. XXXX XXXX submitted a copy of the complaint to the public safety secretary in XXXX. The male appellant then found out that Mr. XXXX XXXX received a threatening telephone call. The male appellant learned that Mr. XXXX XXXX was shot and killed on XXXX XXXX, 2019, while at a neighbourhood bar.
- [9] In XXXX 2019, CJNG members went to the new XXXX to collect the monthly quota. They reportedly told the employees that they were going to burn down the XXXX if they did not find the male appellant.
- [10] Fearing for the worst, the male appellant closed the location in XXXX and left Mexico for Canada on XXXX XXXX, 2019.

ROLE OF THE REFUGEE APPEAL DIVISION

- [11] The RAD must undertake its own analysis to assess whether the RPD was correct with respect to each of the errors alleged in the appellant's arguments. Although in some exceptional cases the RAD may defer to the RPD's assessment,¹ the applicable standard of review in this case is correctness.

ANALYSIS

Credibility

- [12] The appellants submit that the omissions raised by the RPD cannot be described as significant. The panel must take the facts described by a refugee protection claimant to be true and may reject them only if there is valid reason to doubt them. According to the appellants, the alleged contradictions, omissions and implausibilities noted by the member reveal that the RPD abused its power of investigation by dismissing all of the appellants' explanations regarding the IFA.
- [13] To begin with, I note that the arguments put forward by the appellants are general in nature and do not specify the omissions, contradictions or implausibilities in question.
- [14] I reviewed the RPD's decision, and I note that the member did not challenge the appellants' credibility with respect to either the events they allegedly experienced in Mexico or the appellants' prospective risk in the IFA cities. In my view, the appellants are confusing the issue of credibility with that of sufficiency of evidence, a concern that the RPD indeed raised and that will be addressed in the paragraphs below. Accordingly, I am of the opinion that the appellants' arguments regarding the issue of credibility are unfounded.

Internal flight alternative

- [15] The determinative issue before the RPD and in this appeal is the IFA.

- [16] The RAD analyzed the appeal in light of the arguments raised in the appellants' statement as well as in their memorandum. The RAD relied on the new National Documentation Package (NDP) on Mexico, dated April 29, 2022, and cited by the appellants.

Burden of proof

- [17] The appellants submit that the RPD imposed an extraordinary burden of proof to establish what happened to them in Mexico. They argue that, in assessing the IFA, the RPD was supposed to consider whether the appellants face a serious possibility of persecution.
- [18] I cannot accept those arguments. I am of the view that the RPD correctly analyzed the refugee protection claims in relation to section 97 of the IRPA, since the appellants did not establish a ground for persecution under the Convention. Their claims are based on the risk to which they would be subjected because of the male appellant's refusal to pay the extortion money demanded by the CJNG and because he signed a petition against the cartel. These allegations do not have a nexus to the Convention. Accordingly, the applicable burden of proof is the balance of probabilities, which is greater than that of the serious possibility of persecution. The RPD did not err in that respect.

First prong - prospective risk not established

- [19] I am of the opinion that the appellants did not establish that they would be subjected to a risk to their lives, a danger of torture, or a risk of cruel and unusual treatment or punishment if they moved to Mérida or Campeche.
- [20] The IFA analysis requires a contextual approach, taking into account the profile of the agents of harm, as well as their motivation and ability to track down the appellants throughout Mexico. A serious possibility of persecution or a risk within the meaning of section 97 of the IRPA can be found only if it is demonstrated that the agents of persecution have the "means and motivation" to find the appellants.²

Prospective risk from the CJNG

- [21] The RPD considered that the determinative issue was the cartel's lack of motivation to track down the appellants elsewhere in Mexico to take revenge on them because the male appellant signed a petition against the cartel. The RPD weighed the following elements in concluding that the CJNG lacked the motivation to find the appellants in the cities proposed as IFAs:

* The cartel has not made attempts to locate the male appellant since he left the country in XXXX 2019.

* The XXXX in XXXX where his mother works is still open, and his mother continues to pay the quota every month.

* The second XXXX in XXXX, which the male appellant ran, has been closed since XXXX 2019.

* The CJNG has not bothered his mother since the male appellant's departure, and the cartel has not inquired about him since XXXX 2019.

* There is no evidence that the cartel would go to the lengths necessary to locate the appellants XXXX XXXX XXXX kilometres from the state of Veracruz, even though the cartel has a presence in other Mexican states and alliances with other cartels.

- [22] The appellants argue that the RPD erred in interpreting the evidence. Specifically, they submit that, by failing to take into account all the evidence, including their testimony and the objective evidence in the NDP, the RPD rendered a decision that lacked reason, justification and intelligibility. The appellants specifically cite tabs 7.15 and 7.30 of the NDP in pointing out that organized crime, including the CJNG, is established all over Mexico. In addition, referring to Tab 3.5, they state that their personal information is readily available on the black market.
- [23] The arguments put forward by the appellants above pertain to the ability of their agent of harm, the CJNG, to find them in the IFA cities. I note that the RPD did not address that prong because it concluded that the cartel's lack of motivation to find the appellants outside their city is determinative in this case. I agree with the RPD in that respect. Although an analysis of the objective documentary evidence shows that the CJNG has the ability to operate nationally, I concur with the RPD's conclusion that the cartel has not demonstrated an interest in tracking down the appellants since XXXX 2019, for the same reasons.
- [24] The appellants argue that the RPD showed bias in its decision, in particular, the belief that the CJNG forgets about or forgives people it persecutes after a period of three years; the consideration that the cartel's motivation with respect to the appellants is strictly financial; and the consideration that a XXXX XXXX XXXX-kilometre distance within Mexico would prevent the cartel from finding the appellants.
- [25] Contrary to the appellants' arguments, I am of the view that the considerations raised by the RPD, in particular, the amount of time that has passed since the events in question, the distance between the IFA cities and the site of the incidents, and the nature of the cartel's motivation, do not amount to bias on the RPD's part. Rather, these considerations are relevant to the analysis of the viability of an IFA and are supported by the objective evidence.
- [26] Coupled with that is the fact that the agents of harm have not attempted to obtain information about the male appellant since XXXX 2019 or to threaten his mother, who is still running the XXXX in XXXX, a central factor, in my view, in establishing the cartel's lack of interest in tracking down the male appellant in the IFA cities.
- [27] According to the objective evidence, cartels use family networks to track or intimidate their victims.³ They abduct and torture relatives in order to find information about the targeted individual's whereabouts.⁴ According to the Federal Court, it is common sense that if the gang was truly looking for the claimant, one of the first directions it would go is to his

family.⁵ The Court stated the following: "This absence of evidence is an element that can reasonably support a finding of a lack of ongoing interest in pursuing the applicant and therefore a finding of an IFA".⁶

[28] I note that, according to the male appellant's written account, his mother informed the cartel that the male appellant found a job outside the country. That said, there is no evidence that the cartel attempted to find out whether the male appellant had returned to the country since leaving, or any evidence of threats against him or his family since.

[29] Although the cartel's ability to track down people within Mexico is not disputed, the objective evidence shows that relocating somewhere else in the country might work to eliminate the risk of harm if the conflict is not too serious:

...it is an oversimplification to say that a group will track just anyone. It really depends on who you are and what you did. Low ranking members are not worth the time or resources for armed groups to track and kill. Instead, high-ranking members or someone who betrayed a [high-ranking member of] a criminal organization may cause you to be tracked or targeted.

...

the safety of an individual who relocates to flee from one of these organizations' threats depend on the interests a group may have to punish or retaliate against them. If the conflict is not too serious, a relocation might work.⁷

[30] I also note that the objective evidence states the following:

criminal groups are motivated to track certain individuals because they steal or lose money; due to personal rivalries; for political incentives/reasons...or due to "personal vengeance; perceived betrayal; public exposition of relationships with public officials, politicians or investments; or cooperation with authorities as informants or collaborative witnesses".⁸

[31] The male appellant alleges that the cartel would want revenge against him because he signed a petition to protest the monthly quotas demanded by the cartel. According to the male appellant's statements, the petition was led by a business association against organized crime. The association was headed by Mr. XXXX XXXX, who was subsequently murdered by the CJNG. There is no evidence that others who signed the petition were harmed by the cartel. Given that the cartel never again inquired what became of the male appellant after XXXX 2019 and that there is no evidence of the authorities taking action against the cartel following the petition, I am of the opinion that the male appellant is not a particular [translation] "enemy" of the cartel such that he would be the subject of ongoing interest after his departure from the region.⁹ I am of the view that, even though he may still face a risk in his hometown, the evidence does not establish, on a balance of probabilities, that the appellants would be subjected to a prospective risk from their agents of harm in Campeche or Mérida.

Prospective risk from Mr. XXXX

[32] The RPD concluded that the male appellant did not establish, on a balance of probabilities, that Mr. XXXX, the brother of his father's spouse and former mayor of his hometown, is genuinely motivated to this day to target the male appellant or kidnap his son. The reason the RPD arrived at that conclusion is that neither the male appellant nor his family had problems with Mr. XXXX in the 30 years they lived near one another, and that the male appellant did not raise any recent threats from Mr. XXXX. The male appellant did not challenge the RPD's conclusion on this issue, which I consider to be correct. I concur with the RPD's conclusion for the same reasons.

Second prong - relocating to the IFA cities is not unreasonable

- [33] The appellants submit that organized crime is present throughout the country, including in the IFA cities. Referring to Tab 1.5 of the NDP, they state that the number of homicides in Mexico in one year rose in 24 of 32 states and that 9 out of 10 victims of homicide are men, arguing that this makes their relocation to those cities unreasonable. They criticize the RPD for failing to explain why the cities of Mérida and Campeche are viable IFAs. According to them, the states of Campeche and Yucatán are among the most dangerous places in the world to move to when fleeing from organized crime in Mexico. They submit that the NDP contains no claim that the states of Campeche and Yucatán have more police officers or better state protection against organized crime.
- [34] I agree with the RPD that, in light of the documentary evidence, the crime situation raised by the appellants is not such that it would make the IFA unreasonable.
- [35] According to Tab 1.5 of the NDP, the states of Campeche and Yucatán are among the most peaceful states in the country¹⁰ (unlike the appellants' home state, Veracruz, which is one of the states most affected by drug-related and gang violence).¹¹ This supports the RPD's conclusion that the cities of Mérida and Campeche are viable IFAs for the appellants. While those regions do have an organized crime element, it is not sufficient to establish that the male appellant is still wanted by his agents of harm, that they are motivated to expend resources on locating him in the country, as explained above, or that the level of crime would make it unreasonable to relocate there.
- [36] In addition, the appellants argue that Tab 1.5 of the NDP is not relevant to establish the viability of the proposed IFAs, since the factors considered in measuring the peace index in Mexico's various states, that is, the level of street brightness, access to high-speed Internet, the presence of parks and better sports facilities, and the inclusion of Indigenous peoples, are unhelpful in assessing the risk faced by someone fleeing from organized crime.
- [37] I reviewed the report listed at Tab 1.5 of the NDP (by the Instituto para la Economía y la Paz (IEP) [Institute for Economics & Peace], an independent, non-partisan and non-profit think tank headquartered in Sydney), and I am of the view that the appellants' interpretation is incorrect and is taken out of context. The report clearly states on page 11 that the Mexico

Peace Index is based on the following five indicators: homicide, violent crime, organized crime, firearms crime and detention without a sentence. Based on those indicators, Yucatán and Campeche are ranked the first and fourth most peaceful states, respectively.

- [38] This is corroborated by the Bertelsmann Transformation Index cited in the document at Tab 7.8, which indicates that "'widespread violence and ungovernability...have affected almost all Mexican states,' except Yucatán, Campeche, and Aguascalientes".¹²
- [39] The objective evidence supports the RPD's conclusion that the security situation in Mérida and Campeche does not make the appellants' relocation objectively unreasonable.
- [40] The appellants further argue that they have neither family nor employment in Mérida or Campeche and that the female appellant is still having trouble after giving birth.
- [41] According to the Federal Court of Appeal in Ranganathan, a very high threshold must be set to determine whether it is unreasonable for a refugee protection claimant to relocate elsewhere in the country to flee from the alleged danger. The Court stated the following:

It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant in travelling or temporarily relocating to a safe area.... This is in sharp contrast with undue hardship resulting from loss of employment, loss of status, reduction in quality of life, loss of aspirations, loss of beloved ones and frustration of one's wishes and expectations.¹³

- [42] The RPD took into account the ages of the male appellant and his spouse, their level of education, their work experience, and the freedom to practise their religion and to speak their language in the IFA cities and correctly concluded that they did not provide clear and concrete evidence to establish that they would not be able to find employment and start over in the IFA cities. At the hearing, the appellants did not submit that the female appellant's health is a barrier to their relocation and did not provide concrete evidence establishing that her postpartum issues are so serious that the female appellant could not work or that they would put her life at risk.
- [43] I also note the fact that Mexico's economy was hit hard by the pandemic and that it could cause the poverty rate across the country to rise from 50% to 56%.¹⁴ However, it is reported that those most vulnerable to poverty live in rural areas. Furthermore, the objective evidence on Mexico shows that the employment rate in the city of Mérida for the first quarter of 2020 was 97.5%, one of the highest in the country.¹⁵ Given that the male appellant and his spouse have university educations and work experience in Mexico, it was not established that they would not be able to find job opportunities in the IFA cities, which are well ranked in Mexico from a safety and economic standpoint.¹⁶

- [44] Although relocating is inherently difficult, especially when someone does not have a support system in the new location, I am of the view that neither the objective evidence nor the appellants' circumstances establish that they would be unable to start over and support themselves, or that it would otherwise be unduly harsh for them to move to the IFA cities, pursuant to the case law. The RPD did not err in that respect.
- [45] Lastly, the appellants argue that the RPD erred by failing to take into account the best interests of all their children in its IFA analysis.
- [46] According to the Federal Court, the separation of parents from their minor children and the principle of the best interests of the child are relevant factors in the analysis of whether an IFA is unreasonable.¹⁷ That analysis is separate from the issue of risk under sections 96 and 97 of the IRPA, where the impact of a family separation is not a consideration.¹⁸
- [47] The RPD seems to confuse the real issue, which in this case pertains to the analysis of the second prong of the IFA test. I am, however, of the view that this is not a fatal error. Although two of the appellants' minor children are Canadian, the appellants did not establish that they could not return with them to Mexico, thereby maintaining family unity and respecting the best interests of the children. The male appellant testified that there is a risk of the children being kidnapped for organ harvesting or recruited to work for organized crime. The appellants did not provide evidence of that, and the objective evidence does not establish that such a risk exists as to make the IFA unreasonable.

CONCLUSION

- [48] Under paragraph 111(1)(a) of the IRPA, I confirm the determination of the RPD that the appellants, XXXX XXXX XXXX XXXX XXXX, XXXX XXXX XXXX and XXXX XXXX XXXX XXXX XXXX, did not establish that they are refugees or persons in need of protection under sections 96 or 97 of the IRPA.

- [49] The appeal is dismissed.

(signed)

Bianca E. Suci

Bianca Eleonora Suci

August 17, 2022

Date

IRB translation

Original language: French

1 Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145, at paras. 90-91; Canada (Minister of Citizenship and Immigration) v. Huruglica, 2016 FCA 93, at paras. 70-74.

2 Saliu v. Canada (Citizenship and Immigration), 2021 FC 167, para. 46.

3 SAR-1, National Documentation Package (NDP) on Mexico, April 29, 2022, Tab 7.15: Drug cartels, including Los Zetas, the Gulf Cartel (Cartel del Golfo), La Familia Michoacana, and the Beltrán Leyva Organization (BLO); activities and areas of operation; ability to..., Immigration and Refugee Board of Canada (IRB). August 15, 2019. MEX106302.E, para. 4.2. (This document is also available in the version of the package in evidence before the Refugee Protection Division (RPD).)

4 SAR-1, NDP on Mexico, April 29, 2022, Tab 7.8: The crime situation in Mérida, Mexico City, Campeche, and Cabo San Lucas; organized crime and cartel groups active in these cities (as well as Yucatán state, State of Campeche, and Baja California Sur); the ability and..., IRB. September 8, 2021. MEX200732.E, p. 13.

5 Rofriguez Llianes v. Canada (Citizenship and Immigration), 2013 FC 492, para. 10.

6 Leon v. Canada (Citizenship and Immigration), 2020 FC 428, para. 16.

7 SAR-1, NDP on Mexico, April 29, 2022, Tab 7.8: The crime situation in Mérida, Mexico City, Campeche, and Cabo San Lucas; organized crime and cartel groups active in these cities (as well as Yucatán state, State of Campeche, and Baja California Sur); the ability and..., IRB. September 8, 2021. MEX200732.E. (Note that this document is also available in the NDP in evidence before the RPD.)

8 Ibid., Tab 7.8.

9 Leon v. Canada (Citizenship and Immigration), 2020 FC 428, para. 25.

10 SAR-1, NDP on Mexico, April 29, 2022, Tab 1.5: Mexico Peace Index 2021: Identifying and Measuring the Factors that Drive Peace. Institute for Economics & Peace. May 2021, p. 8.

11 SAR-1, NDP on Mexico, April 29, 2022, Tab 7.8: The crime situation in Mérida, Mexico City, Campeche, and Cabo San Lucas; organized crime and cartel groups active in these cities (as well as Yucatán state, State of Campeche, and Baja California Sur); the ability and..., IRB. September 8, 2021. MEX200732.E, pp. 1, 2.

12 SAR-1, NDP on Mexico, April 29, 2022, Tab 7.8: The crime situation in Mérida, Mexico City, Campeche, and Cabo San Lucas; organized crime and cartel groups active in these cities (as well as Yucatán state, State of Campeche, and Baja California Sur); the ability and..., IRB. September 8, 2021. MEX200732.E, p. 2.

13 Ranganathan v. Canada (Minister of Citizenship and Immigration), 2000 CanLII 16789 (FCA), [2001] 2 FC 164, para. 15.

14 SAR-1, NDP on Mexico, September 29, 2021, Tab 1.12: The socio-economic situation, including demographics, employment rates, economic sectors, and crime rates, particularly in Mexico City, Mérida, Puebla, Guadalajara and Monterrey (2017-September 2020). IRB. September 9, 2020. MEX200312.E, p. 5.

SAR-1, NDP on Mexico, September 29, 2021, Tab 7.24: Virus-proof Violence: Crime and COVID-19 in Mexico and the Northern Triangle. Latin America Report No. 83. International Crisis Group. November 13, 2020, p. 19.

15 SAR-1, NDP on Mexico, September 29, 2021, Tab 1.12: The socio-economic situation, including demographics, employment rates, economic sectors, and crime rates, particularly in Mexico City, Mérida, Puebla, Guadalajara and Monterrey (2017-September 2020). IRB. September 9, 2020. MEX200312.E.

16 SAR-1, NDP on Mexico, April 29, 2022, Tab 1.5: Mexico Peace Index 2021: Identifying and Measuring the Factors that Drive Peace. Institute for Economics & Peace. May 2021, p. 9.

17 Soto v. Canada (Citizenship and Immigration), 2022 FC 665, para. 27.

18 Ibid., paras. 23, 24.

RAD File No. / No de dossier de la SAR : MC2-07553

MC2-07554 / MC2-07555

RAD.25.02 (August 20, 2021)

Disponible en français

2

Immigration and Refugee

Board of Canada

Refugee Appeal Division

Commission de l'immigration

et du statut de réfugié du Canada

Section d'appel des réfugiés

RAD.25.02 (August 20, 2021)

Disponible en français

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

CASE PAGE <https://chat.esheria.ai/case-law/canada/internalflightalternative-refugee-appeal-division-2022--6a40c3c64cf2c72690fb783e>

A source URL was not supplied in the case record. Consult the court's original record before reliance.

Prepared on 28 October 2026 · Esheria