

CANADA / JUDGMENT

Mina v. Canada (Citizenship and Immigration)

2025 FC 1909

COURT

Federal Court

DECIDED

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Mina v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-12-01 Neutral citation 2025 FC 1909 File numbers IMM-19178-24 Decision Content Date: 20251201 Docket: IMM-19178-24 Citation: 2025 FC 1909 Toronto, Ontario, December 1, 2025 PRESENT: The Honourable Justice Battista BETWEEN: CARLOS JILMAR MINA GLADYS MIRLEY GRUESO ANGULO GENESIS JIRETH MINA GRUESO Applicants and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Overview [1] The Applicants seek judicial review of the decision from the Refugee Appeal Division (RAD) finding that they are not Convention refugees because they have an Internal Flight Alternative (IFA) in Barranquilla, Colombia. While most of the RAD's findings were reasonable, the application is granted due to the RAD's unresponsiveness to the Applicants' submissions and its unreasonably restrictive application of the second prong of the IFA test. II. Background [2] The Refugee Protection Division (RPD) refused the Applicants' refugee claims which were based on their fears of persecution from the Colombian armed militia group Ejército de Liberación Nacional (ELN). The RPD found that the Applicants face a credible threat from the ELN, but they have an IFA because the ELN was not motivated to find them in Barranquilla. In applying the IFA test, the RPD considered the residual profile of the Applicants, including discrimination against them as Afro-Colombians, and concluded they would face racism in Barranquilla, but not persecution.

[3] The Applicants appealed to the RAD on the basis that the RPD improperly applied the IFA test. They argued that the RPD erred on the first prong of the IFA test, because they face a risk of persecution in Barranquilla based on the level of influence of the ELN. They also argued that the RPD misapplied the second prong of the IFA test, ignoring the likelihood that they would experience discrimination and racial violence in Barranquilla and ignoring the best interest of the child Applicant.

[4] The RAD refused the appeal, finding no error in the RPD's determination of an IFA in Barranquilla. Regarding the second prong of the IFA test, which asks whether it is reasonable in the Applicants' particular circumstances to relocate to the IFA (Thirunavukkarasu v Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [Thirunavukkarasu]), the RAD found that they had not produced

submissions or evidence that their lives and safety would be in jeopardy. III. Issue [5] The sole issue is whether the RAD's decision is reasonable pursuant to the reasonableness standard described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], affirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21. A reasonable decision must bear the hallmarks of justification, transparency and intelligibility (Vavilov, at para 99). IV. Analysis [6] The RAD's decision was reasonable except for its application of the second prong of the IFA test, related to the reasonableness of the IFA.

- [7] First, the RAD unreasonably failed to address the Applicants' submission that they were at risk of police violence stemming from racial discrimination in Barranquilla. Second, the RAD applied the second prong of the IFA test in an unreasonably restrictive manner.
- [8] The RAD applied the second prong of the IFA test by referring to an excerpt from one Federal Court of Appeal (FCA) decision (*Ranganathan v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 16789 (FCA), [2001] 2 FC 164 [Ranganathan]). The RAD stated: "The Appellants did not provide reasons in their evidence, during their testimony, or in the Applicants' Memorandum as to why living in Barranquilla would put their lives and safety in jeopardy."
- [9] This was an unreasonable finding made without regard to the Applicants' submission and evidence (Vavilov, at paras 127-128). Their memorandum on appeal asserted — although briefly — a risk of police violence in Barranquilla stemming from racial discrimination, and they supported this submission with a citation from the documentary evidence relied upon by the RPD. They also asserted that the proposed IFA was not in the best interest of their child due to the risk of racial discrimination in the IFA.
- [10] Further, the RAD's focus on evidence demonstrating jeopardy to the Applicants' lives and safety was not consistent with the legal constraints on the decision, specifically, jurisprudential precedent and international law sources. As explained recently by Justice Angus Grant: "...one aspect of the [Ranganathan] decision has, in my respectful view, led to some analytical confusion amongst decision-makers. The confusion relates to the Court's statement that the reasonableness threshold "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." While the Court here was clearly underscoring the high threshold associated with the second prong of the IFA test, I do not believe it was creating a standard that is higher than that associated with the refugee definition. Yet, read literally, this could be one interpretation of this phrase, as there are many situations of persecution that may not threaten the very life and physical safety of an individual. For example, the jurisprudence has long recognized that cumulative acts of discrimination — acts that do not necessarily threaten the actual life or physical safety of the individual — may constitute persecutory treatment. Beyond this, it is a matter of simple logic that the second prong of the IFA test was never intended to replicate the first prong which, as noted above, assesses whether a claimant faces a serious possibility of persecution, or a personalized risk of torture, risk to life, or risk of cruel and unusual punishment, in the IFA location. Rather,

in my view, the Court in Ranganathan was merely elaborating on the central consideration raised in Thirunavukkarasu, which was itself an elaboration on the court's reasoning in *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA), [1992] 1 FC 706 [Rasaratnam]. That consideration was, and in my view continues to be, whether it would be objectively reasonable (or not "unduly harsh") to expect a claimant, who is being persecuted in one part of their country, to move to another less hostile part of the country before seeking refugee status abroad. Read in context, I do not believe that the Court in Ranganathan set out to overturn the prior jurisprudence or to materially change the test associated with the reasonableness standard. It follows that I also do not read the Ranganathan decision as creating a narrow, standalone minimum threshold requiring an individual to demonstrate that their actual life, or physical safety would be imperiled in the IFA location. To do so would, as noted above, elevate the threshold for the reasonableness prong of the IFA test above the first prong, rendering that first part of the assessment redundant. (*Murati v Canada (Citizenship and Immigration)*, 2025 FC 818 [Murati], at paras 31-33. Citations added.)

- [11] I appreciate that the RAD did not have the benefit of *Murati* before its decision was rendered on the Applicants' appeal, but this does not impact the unreasonableness of its finding. As noted at paragraph 34 of *Murati*, decisions of this Court have found it unreasonable for decision makers to overlook factors such as HIV-related discrimination, a claimant's emotional state, and the best interests of a child in applying the second prong of the IFA test.
- [12] This Court's approach to the range of circumstances which may make an IFA unreasonable is consistent with examples of unreasonable living conditions provided by the FCA. Hiding out in an isolated region of a country, like a cave or desert or jungle, does not necessarily place a claimant's life or safety in danger but they are identified by the FCA as circumstances that nonetheless render an IFA unreasonable (*Thirunavukkarasu*, at 598). The RAD's sole reliance on *Ranganathan* was not consistent with the common law constraint reflecting this jurisprudence (*Vavilov*, at para 112).
- [13] In addition, the RAD's restrictive interpretation of the IFA test was inconsistent with the UNHCR's updated guideline on the interpretation of the internal flight alternative (Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/03/04 (23 July 2003) [Guidelines] at paras 22-30), cited in *Murati* (*Murati*, at para 35).
- [14] While the guidelines are not binding, IFA determinations must be consistent with them because the guidelines were made pursuant to an international instrument to which Canada is a signatory, the 1951 United Nations Convention Relating to the Status of Refugees, 28 July 1951, 189 UNTS 137, Can TS 1969 No 6 (entered into force 22 April 1954) (Immigration and Refugee Protection Act, SC 2001, c 27 ,s 3(3)(f); *de Guzman v Canada (Minister of Citizenship and Immigration)*, 2005 FCA 436 at paras 75-81). As such, the guidelines operated as an international law constraint on the RAD's decision (*Vavilov*, at para 114). The guidelines

identify a range of factors relevant to the determination of reasonableness of an IFA, such as a claimant's personal circumstances, the impact of past persecution, and possibilities for economic survival (Guidelines, at paras 22-30). V. Conclusion and proposed certified question [15] The application for judicial review is granted because the RAD unreasonably failed to address the Applicants' central submission on the second prong of the IFA test and applied the test in an unreasonably restrictive manner.

- [16] The Respondent proposed the following question for certification: Is a refugee claimant required to prove the existence of conditions which would jeopardize their life or safety in travelling or relocating to a proposed IFA in order to meet the second prong of the IFA test and demonstrate that the proposed IFA is not reasonable?
- [17] The question was proposed on the Respondent's assertion that there is a division in the Court's jurisprudence on the interpretation of the second prong of the IFA test. The Respondent suggested that there is a line of jurisprudence that diverges from Murati, and provided three decisions as examples: Canada (Citizenship and Immigration) v Bellamy, 2024 FC 166 [Bellamy], Mba v Canada (Citizenship and Immigration), 2025 FC 1098 [Mba] and Singh v Canada (Citizenship and Immigration), 2025 FC 1846 [Singh].
- [18] The test for certification involves the following components: (1) the question is dispositive of an appeal; (2) the question has been raised and dealt with in the Court's reasons; (3) the question transcends the interests of the parties; and (4) the question must raise an issue of broad significance or general importance (Zhu v Canada (Citizenship and Immigration), 2025 FC 661 at para 69). Further, the premise of the question must also accord with the facts of the case (Canada (Citizenship and Immigration) v Galindo Camayo, 2022 FCA 50 at para 34).
- [19] The question will not be certified because it does not raise a question of broad significance or general importance. The cases relied upon by the Respondent do not in fact diverge from the approach in Murati.
- [20] In Bellamy and Singh, the determinative issue was not the requirements of the second prong of the IFA test but the sufficiency of the evidentiary analysis, based on the Applicant's submissions and burden to establish that the proposed IFA is unreasonable (Bellamy, at paras 50-65; Singh, at paras 43-48). As such, Murati does not impact the analyses in Bellamy and Singh. By contrast, Mba does cite Murati but does not find it to be determinative and does not diverge from Murati's findings (Mba, at para 24).
- [21] Beyond these decisions, I am not convinced that there is a fissure in Court's jurisprudence regarding the scope of the second prong of the IFA test. JUDGMENT in IMM-19178-24 THIS COURT'S JUDGMENT is that: The application for judicial review is granted, the decision of the Refugee Appeal Division is set aside, and the matter is returned to a differently constituted panel of the Refugee Appeal Division for redetermination. There is no order regarding costs and no question for certification. "Michael Battista" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-19178-24 STYLE OF CAUSE: CARLOS JILMAR

MINA, GLADYS MIRLEY GRUESO ANGULO, GENESIS JIRETH MINA GRUESO v. THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Toronto, Ontario
DATE OF HEARING: november 27, 2025 JUDGMENT AND REASONS: BATTISTA J. DATED: DECEMBER 1, 2025 APPEARANCES: Elliot Wilson For The Applicants John Loncar For The Respondent SOLICITORS OF RECORD: Grice & Associates Barrister and Solicitor Toronto, Ontario For The Applicants Attorney General of Canada Toronto, Ontario For The Respondent

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