

CANADA / JUDGMENT

TB9-34886

COURT

Refugee Appeal Division

DECIDED

11 December 2020

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

RAD File / Dossier de la SAR : TB9-34886 TB9-34887 Private Proceeding / Huis clos Reasons and decision ? Motifs et décision Persons who are the subject of the appeal XXXX XXXX XXXX XXXX XXXXXXXX XXXX XXXX XXXX Personnes en cause Appeal considered / heard at Vancouver, BC Appel instruit / entendu à Date of decision December 11, 2020 Date de la décision Panel Kim Polowek Tribunal Counsel for the persons who are the subject of the appeal N/A Conseil des personnes en cause Designated representative XXXX XXXX XXXX XXXXforXXXX XXXXXXXX XXXX XXXX XXXX Représentant(e) désigné(e) Counsel for the Minister N/A Conseil du ministre REASONS FOR DECISION OVERVIEW

- [1] I dismiss this appeal. XXXX XXXX XXXX XXXX (Principal Appellant) and XXXX XXXX XXXX XXXX (Associate Appellant) are citizens of Mexico. Their claims for refugee protection were denied by the Refugee Protection Division (RPD) on December 3, 2019 on the basis of the viability of an Internal Flight Alternative (IFA) in Merida, Yucatán.
- [2] The Appellants fear that they are at risk of their lives, and of cruel and unusual treatment and punishment, from XXXX XXXX XXXX XXXX XXXX XXXX and his associates who belong to the Cartel Jalisco Nueva Generacion (CJNG) cartel.
- [3] On appeal, it is submitted that the RPD erred in its IFA finding as the agents of harm can find the Appellants through databases, work or school. Second, it submitted that the RPD failed to consider the best interest of the child and the Canadian-born daughter. Third, the RPD erred in finding no possibility of persecution or harm in the IFA, as the Appellants fear that the enemy will find them. Fourth, the RPD erred as cartels like the one the Appellants fear can access all information and act with impunity throughout Mexico.
- [4] No new evidence was submitted for my consideration.
- [5] Based on my independent review, I find that the RPD was correct to find that the Appellants have an IFA in Mexico, and this is determinative of their appeal. DECISION
- [6] I dismiss the appeal. The RPD was correct in finding that the Appellants are neither Convention1 refugees nor persons in need of protection.

ANALYSIS

- [7] My role is to look at all the evidence and decide if the RPD made the correct decision.² After considering the Appellants' arguments and conducting an independent review of the entire record, including reviewing the written transcript of the RPD hearing, I find that the determinative issue in this appeal is the viability of an IFA in Merida, in the state of Yucatán.
- [8] A refugee Claimant is expected to seek protection in another part of their own country, if it is available, before they seek refuge in Canada.³ The notion of an IFA is inherent in the definition of a Convention refugee because refugee protection is a form of surrogate protection.⁴ Accordingly, the Appellants bear the onus to demonstrate that there is a serious possibility of persecution or probability of harm throughout the country, including the area identified as an IFA.⁵
- [9] The analysis for assessing an IFA has two parts according to the Federal Court in *Rasaratnam*.⁶ I must first determine whether there is a serious possibility that the Appellants will be persecuted, or whether they face, on a balance of probabilities, a risk to their lives, a risk of cruel and unusual treatment or punishment or a danger of torture in the proposed IFA. Secondly, I must also be satisfied, after considering the Appellants' individual circumstances and the conditions in the proposed IFA, that it would not be unreasonable to seek refuge in the IFA. An IFA will only be viable if both criteria are met.⁷ For the reasons that follow, I find that the Appellants failed to meet their onus of proof under either prong.
- [10] For the following reasons, I find that there is no serious possibility of persecution or likelihood of harm in Merida, because there is no credible evidence to establish, on a balance of probabilities, that the agents of harm have the means, capacity, resources, or motivation to locate the Appellants in the IFA location. I also find that it is objectively reasonable for the Appellants to relocate there. Profile of the IFA of Merida
- [11] Merida is the largest city in the Yucatán state, with a population of more than a million people. Merida is about 1,500 kilometers from Querétaro where the incident took place. According to the United States Department of State document, Merida is a medium-threat location.⁸ According to the Government of Mexico statistics, "Yucatán and Campeche are among the safest states in Mexico."⁹ According to the Mexican Peace Index 2020, "Yucatán remains the most peaceful state in Mexico."¹⁰ Further, according to the National Documentation Package (NDP) for Mexico, the Stratfor Global Intelligence group has indicated that the CJNG cartel, which are the agents of harm the Appellants fear, are not present in Merida or anywhere in the State of Yucatán, as indicated in their 2020 Cartel Map by Region of Influence.¹¹ There is no serious possibility of persecution or risk of harm in Merida Motivation of Agents of Harm to Pursue the Appellants Not Established

- [12] The Appellants fear that they will be harmed upon their return to Mexico by XXXX or his CJNG associates. The Appellant's husband represented XXXX and was not happy with his legal representation so demanded that his legal fees be returned. When the Principal Appellant's spouse refused to return the money, they threatened him and the Appellants. XXXX was convicted and sentenced to XXXX years in prison and the threats continued even after the Principal Appellant's husband removed himself as Counsel of record for XXXX.
- [13] In determining if the Appellants could live safely in Merida, I must consider whether there is evidence that the agents of harm have the motivation and interest, as well as the capacity and resources, to pursue the Appellants if they relocated within Mexico.
- [14] The Principal Appellant testified to fearing XXXX as well as what she believed to be his CJNG cartel associates. When asked at the RPD how the Principal Appellant knew that XXXX was connected to the cartel, she testified a friend of her husband, a person who works in the federal police, told her husband this information.¹² The RPD observed that the Appellants presented no additional evidence to corroborate XXXX cartel association and noted the Principal Appellant's explanation was that she had not thought of asking her husband for an affidavit confirming this information.
- [15] I find that second-hand information from a friend of the Appellant's husband, absent of any letter or affidavit from the Appellant's husband, is insufficient evidence for me to establish, on a balance of probabilities, that XXXX had any profile or ties to the CJNG gang. Further, I have also reviewed the Appellants' supporting documentation related to XXXX and could find no credible evidence to establish that he had any connections to the CJNG gang. Thus, I find that concerns that XXXX had or has ongoing ties to the CJNG gang is speculative.
- [16] The RPD described the primary agent of harm, XXXX, as having died a few months ago. It appears that the RPD made this assumption due to the Principal Appellant's testimony at the beginning of the hearing. Specifically, when asked by the RPD if there were any documents that she wanted to obtain for the hearing but was unable to, the Appellant testified as follows: "I tried to get a document about the report on the civil situation, something that happened in my house. And some death certificates from the person who contacted us, the person with whom we have a problem in Mexico."¹³ Later in the hearing, the RPD asked the Principal Appellant directly if the death certificate was for XXXX and she explained that it was not for him but for his friend who had introduced her husband to XXXX.¹⁴ The Appellant then testified that XXXX was still in prison. While the Appellant's initial evidence may have given the RPD the impression that she was referring to XXXX, the RPD failed to clarify whom the Principal Appellant was referring to. This was clarified by the Principal Appellant later in the hearing. As such, I find that the RPD did err factually when it stated in its reasons that XXXX had died.
- [17] What is not disputed on appeal, however, is that XXXX is incarcerated in Mexico¹⁵ and is reportedly serving a sentence of over XXXX years, and this mitigates his abilities to search for and find the Appellants in the IFA. Further, as noted, I have insufficient credible

evidence before me to establish that XXXX has a profile with or any association to the CJNG cartel. There is also insufficient evidence for me to find that any CJNG cartel members possess a forward looking interest in targeting the Appellants for harm due to a dispute primarily involving her husband or that they would possess the means and ability to do so.

- [18] In assessing the motivation, interest and means of XXXX or anyone associated with him, I took into consideration the evidence that none of the Appellants' family members have had any contact from XXXX or his associates for purposes of ascertaining their whereabouts. When asked by the RPD if the cartel had come and spoken to the Principal Appellant's parents about where she was, she testified that they had not.¹⁶ The RPD then asked the Appellant if anyone had told her that the cartel was still looking for her, and her testimony was that she knew that they were threatening families in similar kinds of situations, namely people with outstanding debts.¹⁷ The Principal Appellant did not adduce any credible evidence at her hearing that CJNG cartel members have been pursuing her since she left Mexico, and it has now been over two and a half years since the Appellants left Mexico.
- [19] Further, I note that the Principal Appellant's husband is currently residing in Mexico and there is no evidence before me that he has been contacted or located by the CJNG cartel or anyone associated with XXXX relatives.
- [20] I have considered the large geographic size of Mexico, the large number of ports of entry to the country and the large population of the proposed IFA location. I find it would take a significantly motivated and coordinated organization to pursue the Appellants in Merida. As discussed previously, the documentary evidence does not corroborate that the CJNG has that organizational ability in Merida.
- [21] I find it reasonable to expect that if an organization was of sufficient strength and reach to be able to learn of a person's return to Mexico, or their presence in any city in Mexico, there would be objective country condition evidence to support this. Yet, the Appellants have not provided any evidence confirming the CJNG has a physical presence in Merida or that they have access to any corrupt actors to assist them in pursuing the Appellants. In fact, the objective documentary evidence cited above indicates that the CJNG does not operate in Merida, and that Merida is a relatively peaceful location in Mexico.¹⁸
- [22] While the Appellants contend that they are vulnerable to being found and harmed by the CJNG everywhere in Mexico, I agree with the RPD that these concerns are speculative.
- [23] In my assessment of forward-looking risk to the Appellants in Merida I have considered the Appellants' argument that there is objective country evidence which speaks to levels of criminality in Mexico and cartel related violence throughout Mexico.
- [24] However, I point out that "[r]isk cannot be established on the basis of general country documentation alone."¹⁹ The Appellants are required to establish either a personal risk or that they had a profile or belonged to a class of persons who, under the country documentation, would, on a balance of probabilities, be at risk."²⁰ After carefully

considering the Appellant's testimony and submitted evidence , I find that the Appellants have failed to do so. Thus, any risk that the Appellants may face in the IFA is generalized and one which all citizens of Mexico face. However, this risk is lower in Merida. The Mexico Peace Index 2020, which is found in the NDP, item 1.5, indicates that Yucatán continues to be the most peaceful state in Mexico for the past three years with the lowest homicide rate, and Merida is located in Yucatán. Contrary to the national trend in Mexico which has been increasing crime, the firearms crime, homicide and violent crime scores have continued to improve in Yucatán over the last five years.²¹

- [25] I considered the argument on appeal that the cartel can access all information and has the ability to track down targets like the Appellants via national databases. The objective evidence establishes that while state actors and law enforcement may be able to access databases containing an individual's personal information including addresses,²² there is no evidence before me to establish that the CJNG have access to such databases and would use them to locate the Appellants. Considering the objective evidence about the absence of the CJNG cartel in Merida, the incarceration of the primary agent of harm and the lack of evidence that anyone close to the Appellants in Mexico have been sought by anyone associated with the CJNG cartel, I find that the Appellants' assertion that they would be located through databases is speculative.
- [26] For all of the reasons above, I find that it is unlikely, on a balance of probabilities, that the agent of harm will pursue the Appellants if they move to Merida. I find that if the Appellants can safely relocate to Merida, there is no credible and persuasive evidence that the agent of harm has the motivation, means, and capacity to find them there. IFA is Objectively Reasonable It is reasonable for the Appellants to relocate to Merida
- [27] In regard to the second prong of the test, the Appellants must show that the proposed IFA is objectively unreasonable. It is a high burden and is not discharged by job, educational or residential preferences. "Actual and concrete evidence"²³ is necessary to meet the very high threshold for the unreasonableness test. "It requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant."²⁴
- [28] I find that it is reasonable for the Appellants to seek refuge in Merida based on their specific circumstances. There are a range of factors that can inform the analysis of whether a proposed IFA is reasonable for specific refugee Claimants. In the present case, the Principal Appellant identified her safety and the safety of her children as her primary concern at the RPD and on appeal. I have already found that there is insufficient evidence to find that the Appellants face a probability of harm from a criminal who is currently incarcerated, or from his associates.

- [29] In finding that the IFA was reasonable, the RPD noted that the Principal Appellant and her husband, who lives in Mexico, were both well-educated and had attained law degrees. The Principal Appellant held employment in Mexico. The RPD noted that there was no suggestion that the Appellants were denied medical care or that any other circumstances existed such that relocation to Merida would jeopardize the life and safety of the principal Claimant or her family.
- [30] On appeal, it is argued that the RPD failed to consider the best interests of the Principal Appellant's children and her child born in Canada. Regarding the Appellant's child born in Canada, the RPD was not obligated to consider the circumstances of this child as this child did not have a refugee claim before the RPD. Further, while the Associate Appellant may experience a better quality of life in Canada than Mexico, this does not render the IFA objectively unreasonable. As noted, the RPD considered the objective documentation which indicated that "Yucatán and Campeche were among the safest states in Mexico"²⁵ and "Yucatán was the most peaceful state in Mexico."²⁶
- [31] I find that the RPD was correct in my independent assessment of the record. The Federal Court in Adebayo explained that the high onus on the refugee Claimant to demonstrate that a proposed IFA is unreasonable 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."²⁷ In the Appellants' circumstances, their concerns do not establish that their lives and safety would be jeopardized if they relocated to Merida. The Appellants have failed to discharge their onus of showing that it would be objectively unreasonable in the circumstances for them to relocate to Merida.

CONCLUSION

- [32] The RPD was correct in its determination that the Appellants have a viable IFA in Merida. I therefore dismiss the appeal and confirm the decision of the RPD that the Appellants are neither Convention refugees nor persons in need of protection.²⁸ (signed) Kim Polowek Kim Polowek December 11, 2020 Date 1 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. 2 Canada (Citizenship and Immigration) v. Huruglica, 2016 FCA 93; Rozas del Solar v. Canada (Citizenship and Immigration), 2018 FC 1145. 3 Canada (Attorney General) v. Ward, [1993] 2 SCR 689 at 752. 4 Thirunavukkarasu v. Canada (Minister of Employment and Immigration), [1994] 1 FC 589. 5 Rasaratnam v. Canada (Minister of Employment and Immigration), [1992] 1 FC 706, at 710. See also: Okechukwu v. Canada (Citizenship and Immigration), 2016 FC 1142, at para. 35. 6 Ibid. 7 Ibid, at 711; Calderon v. Canada (Citizenship and Immigration), 2010 FC 263, at para. 10. 8 National Documentation Package (NDP) for Mexico (September 30, 2020), item 7.14: Mexico. 2020 Crime and Safety Report: Mérida, United States. Overseas Security Advisory Council, 1 August 2020, at p. 1. 9 Ibid. 10 Ibid, item 1.5: Mexico Peace Index 2020, Institute for Economics and Peace, May 2020. 11 Ibid, item 7.2: Mexico: Organized Crime and Drug

Trafficking Organizations, United States. Congressional Research Service, 28 July 2020. 12 RPD Transcript (September 13, 2019), at p. 22. 13 Ibid, at p. 6. 14 Ibid, at p. 23. 15 Ibid, at p. 23. 16 Ibid, at p. 26. 17 Ibid, at p. 26. 18 NDP for Mexico (September 30, 2020), item 7.2. 19 Gutierrez v. Canada (Immigration, Refugees and Citizenship), 2018 FC 4, at para. 59. 20 Ibid. 21 NDP for Mexico (September 30, 2020), item 1.5. Note: The same information concerning Yucatán state was in this NDP item before the RPD. 22 NDP for Mexico (September 30, 2020), item 14.1: Access to databases of personal information by police or a third party, including who has access; recent data breaches (2017-August 2019), Immigration and Refugee Board of Canada, 1 August 2019. Note: This item was in the NDP version before the RPD. 23 Ranganathan v. Canada (Minister of Citizenship and Immigration), [2001] 2 F.C. 164 (C.A.), at para. 15. 24 Ibid. at para. 14. 25 NDP for Mexico (September 30, 2020), item 7.14. 26 NDP for Mexico (September 30, 2020), item 1.5. 27 Adebayo v. Canada (Immigration, Refugees and Citizenship), 2019 FC 330, at para. 53. Citing Rasaratnam, supra, at endnote 7. See also: Armando v. Canada (Citizenship and Immigration), 2020 FC 94, at para. 62; Brahim v. Canada (Citizenship and Immigration), 2019 FC 503, at para. 27. 28 Immigration and Refugee Protection Act, S.C. 2001, c. 27, section 111(1)(a).

RAD File / Dossier de la SAR : TB9-34886 TB9-34887 RAD.25.02 (January, 2020) 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 (January, 2020) 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/minister-InternalFlightAlternative-refugee-appeal-division-2020--6a40c3b64cf2c72690fb3148>

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

Prepared on 28 October 2026 · Esheria