

CANADA / JUDGMENT

Padron Santos v. Canada (Citizenship and Immigration)

2024 FC 1870

COURT

Federal Court

DECIDED

22 November 2024

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Padron Santos v. Canada (Citizenship and Immigration) Court (s) Database Federal Court
Decisions Date 2024-11-22 Neutral citation 2024 FC 1870 File numbers IMM-5016-23 Decision
Content Date: 20241122 Docket: IMM-5016-23 Citation: 2024 FC 1870 Ottawa, Ontario, November
22, 2024 PRESENT: The Honourable Mr. Justice Ahmed BETWEEN: ROCIO ESTEFANIA PADRON
SANTOS JOSE MANUEL SANCHEZ SERRANO Applicants and THE MINISTER OF CITIZENSHIP
AND IMMIGRATION Respondent JUDGMENT AND REASONS I. Overview

- [1] The Applicants seek judicial review of a decision of the Refugee Appeal Division (the “RAD”) dated March 17, 2023 denying them status as Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the Immigration and Refugee Protection Act, SC 2001, c 27 (“IRPA”).
- [2] The Applicants submit that the RAD committed several reviewable errors and rendered a decision that is unreasonable.
- [3] For the reasons that follow, I disagree. I find that the RAD’s decision is reasonable. This application for judicial review is dismissed. II. Facts
- [4] Rocio Estefania Padron Santos (the “Principal Applicant”) and Jose Manuel Sanchez Serrano (the “Associate Applicant”) are citizens of Mexico.
- [5] In May 2018, the Principal Applicant was sexually assaulted by an unknown assailant who threatened her and her family by name. Although the Principal Applicant reported the incident to police, no investigation was launched because she could not identify the attacker.
- [6] For weeks afterward, the Principal Applicant was followed by a car with tinted windows, prompting her to quit her job and flee to her parents’ home. In due course, the same car appeared in front of her parents’ home.
- [7] The Principal Applicant then fled to a hotel. The car appeared in front of the hotel and a man asked for the Principal Applicant at the front desk.

- [8] Following this incident, the Applicants fled to Canada and submitted a refugee claim. The Applicants subsequently learned that flyers requesting information about the Principal Applicant's location had been posted in the city where she was attacked.
- [9] In 2022, the RPD dismissed the Applicants' refugee claims. The Applicants appealed the RPD's decision to the RAD.
- [10] In 2023, the RAD dismissed the Applicants' appeal, finding that the determinative issue was the existence of a viable IFA in Mexico City. III. Issue and Standard of Review
- [11] The sole issue in this application is whether the RAD's decision is reasonable.
- [12] The parties submit that the applicable standard of review is reasonableness (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at paras 16–17, 23–25 ("Vavilov")). I agree.
- [13] Reasonableness is a deferential, but robust, standard of review (Vavilov at paras 12-13, 75, 85). The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified (Vavilov at para 15). A decision that is reasonable as a whole is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker (Vavilov at para 85). Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision maker, and the impact of the decision on those affected by its consequences (Vavilov at paras 88-90, 94, 133-135).
- [14] For a decision to be unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant (Vavilov at para 100). Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision maker, and it should not interfere with factual findings absent exceptional circumstances (Vavilov at para 125). Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep" (Vavilov at para 100). IV. Analysis [15] The Applicants challenge the reasonableness of the RAD's decision on three main grounds. First, they argue that the RAD failed to adequately address gender-based persecution, prematurely foreclosing the assessment required by section 96 of IRPA. Second, they submit that the RAD ought to have extended the presumption of truthfulness to their claim that the Principal Applicant's attacker was a member of a cartel. Third, they contend that the RAD failed to undertake an independent IFA analysis, instead reproducing the RPD's analysis that inadequately addressed gender-based persecution in Mexico City.
- [16] The Respondent submits that the RAD's decision is reasonable. According to the Respondent, the determinative issue in this application is the existence of a viable IFA. The mere fact that the RAD reached a different conclusion than the Applicants wished for on this issue does not indicate that they failed to address the Applicants' evidence. Rather, the Applicants are asking this Court to reweigh the evidence and redetermine the outcome of the appeal, which exceeds the scope of reasonableness review.

- [17] I agree with the Respondent.
- [18] The RAD reasonably determined that the Applicants have a viable IFA in Mexico City. The two-pronged test for a viable IFA is: (1) there is no serious possibility of persecution or risk of harm in the IFA, and (2) it is reasonable in the Applicant's circumstances to relocate to the IFA (*Rasaratnam v Canada (Minister of Employment and Immigration)*(CA), 1991 CanLII 13517 at 711 (FCA) ("Rasaratnam")).
- [19] On the first prong of the test in *Rasaratnam*, the Respondent correctly notes that there was insufficient evidence linking the attacker of the Principal Applicant to a cartel. The Applicants' evidence for this link is that cartels are known to stalk, harass the family of, and post flyers of their targets and that the Principal Applicant's "actions after the attack were wholly aligned with those of someone who thought they were being targeted by a criminal organization...and/or by a cartel." I agree with the Respondent that this evidence is speculative, rather than grounded in specific, concrete facts about the attack or the attacker. The presumption of truthfulness therefore does not apply (*Chen v Canada (Citizenship and Immigration)*, 2022 FC 537 at para 28; *Mcphee v Canada (Citizenship and Immigration)*, 2023 FC 1371 at para 30).
- [20] Consequently, I find that the RAD reasonably determined that there was insufficient support for the allegation that the person who attacked the Principal Applicant was a member of a cartel. This determination is consistent with the non-speculative evidence on the record, such as the limited geographic scope of the attacker's actions and the fact that Mexico City, the IFA identified by the RPD and RAD, "is a city of over 20 million people, located over 400 kilometers from where [the Principal Applicant] was attacked."
- [21] It was similarly open to the RAD to determine that the Applicants' submissions on gender-based persecution in Mexico City do not adequately demonstrate risk per the first prong of the test in *Rasaratnam*. Although the Applicants submit that the Principal Applicant was attacked "because of her gender," their principle backing for this statement is that "the nature of the attack and the following incidents are consistent with this conclusion." The RAD correctly notes that this is not sufficient to substantiate the Applicants' claim.
- [22] Furthermore, I cannot agree with the Applicants' submission that the RAD disregarded the evidence on the record. The RAD explicitly "accept[ed] the evidence submitted by the [Applicants]...stating the serious nature of gender-based violence in Mexico," but ultimately found that "the [Applicants] fail to connect how this evidence would apply to their circumstances." Contrary to the Applicant's submissions, the material on gender-based persecution in Mexico City was duly considered and found to be insufficient by the RAD, not disregarded or ignored.
- [23] On the second prong of the test in *Rasaratnam*, I find that the RAD was responsive to the Applicants' submissions about mental health and gender-based persecution.

- [24] The RAD explicitly acknowledged the importance of mental health and the psychological report, stating, “I agree with the [Applicants] the RPD wrongly overlooked this critical evidence.” Having reviewed the report, the RAD reasonably concluded that the document fell short of demonstrating that relocation would be objectively unreasonable, since “more than 40% of all psychiatrists in Mexico practice [in Mexico City]” and the Principal Applicant could therefore “seek out and receive counselling services” in the IFA.
- [25] Similarly, the RAD acknowledged the Applicants’ submissions on gender-based persecution. As previously noted, the tribunal reasonably determined that there was insufficient evidence for these submissions. The RAD also accounted for the Applicants’ submissions about gender discrimination in the Mexican labour market, highlighting the Applicants’ own testimony that “they could find jobs in Mexico City” and ultimately determining that the “[Associate Applicant] could find work even if it took time for [the Principal Applicant] to find a job.”
- [26] In summary, I find that the RAD adequately addressed the Applicants’ evidence. The RAD’s decision is reasonable. V. Conclusion
- [27] This application for judicial review is dismissed. The RAD’s decision demonstrates a rational chain of analysis and accounts for both the legislative scheme and factual matrix of the appeal (Vavilov at paras 108 and 126). No questions for certification were raised, and I agree that none arise. JUDGMENT in IMM-5016-23 THIS COURT’S JUDGMENT is that: This application for judicial review is dismissed. There is no question to certify. “Shirzad A.” Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: IMM-5016-23 STYLE OF CAUSE: ROCIO ESTEFANIA PADRON SANTOS AND JOSE MANUEL SANCHEZ SERRANO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION PLACE OF HEARING: Ottawa, Ontario DATE OF HEARING: September 11, 2024 JUDGMENT and reasons: AHMED J. DATED: November 22, 2024 APPEARANCES: Ayaka Yoshinari For The Applicants Amy King For The Respondent SOLICITORS OF RECORD: Anwari Law Barrister and Solicitor Toronto, Ontario For The Applicants Attorney General of Canada Toronto, Ontario For The Respondent

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.

ORIGINAL SOURCE <https://norma.lexum.com/fc-cf/decisions/en/item/526929/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/padron-santos-v-canada-citizenship-and-immigration-2024>

Prepared on 27 October 2026 · Esheria