

CANADA / JUDGMENT

Yauce Baldera v. Canada (Citizenship and Immigration)

2026 FC 83

COURT

Federal Court

DECIDED

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Decision Content

Date: 20260120

Docket: IMM-8371-23

Citation: 2026 FC 83

Ottawa, Ontario, January 20, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

ROSA AMELIA YAUCE BALDERA

JOSUE VENTURA OLAYA YAUCE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

- [1] This is an application for judicial review of a decision of the Refugee Appeal Division [RAD] dismissing the Applicants' appeal of a negative refugee determination by the Refugee Protection Division [RPD]. The determinative issue was whether the Applicants have an internal flight alternative [IFA] in Lima, Peru.
- [2] The Applicants have not established that the RAD's decision is unreasonable and the judicial review is dismissed.
- I. BACKGROUND [3] Ms. Baldera, the Principal Applicant, and her son, Josue [Associate Applicant, together with the Principal Applicant, the Applicants] are citizens of Peru.
- [4] The Applicants lived in Chiclayo, Peru with Ms. Baldera's husband and Josue's father. Early in Ms. Baldera's relationship with her husband, she was introduced to his close friend, S. S often spent time at their home.
- [5] While pregnant with Josue, Ms. Baldera learned that she was HIV-positive. She never confronted her husband about this, and he died of the illness in 2005.
- [6] After her husband's death, Ms. Baldera says S began to visit her home weekly and offered to take her eldest son, Y, to the market every week.
- [7] In 2016, she was told by some neighbours that someone was beating Y. She found her son bloody and injured. He told her that S had beat him using a gun. Y also revealed that he had been sexually abused by S from a young age, and that S threatened to kill Ms. Baldera and her children if Y had told anyone.
- [8] Ms. Baldera reported S's sexual abuse and assault to the police.
- [9] Afraid for Y's safety, she sent him to Lima, Peru, 10 hours away from Chiclayo. According to her basis of claim form [BOC], the Principal Applicant lost touch with Y after this.
- [10] Ms. Baldera checked on the progress of her police report multiple times. However, she was eventually told that there was no report, and stopped going to the police, who she now believed would not protect her family.
- [11] After this event, S disappeared for some months. In early 2017, the Applicants moved to Tumbes, Peru out of a fear for their safety. According to Ms. Baldera's BOC, the family stayed there for one to two months, until they felt enough time had passed.

- [12] However, two to three months after the family returned to Chiclayo, S resumed visiting their home. He would kick at the door and scream to open it. He would scream about Ms. Baldera's HIV-positive status so loudly that neighbours would hear him. The neighbours then began to avoid Ms. Baldera.
- [13] When S escalated to leaving blood and animal entrails/organs at her door, Ms. Baldera again went to report him to the police. The police officers mocked her. In her BOC, she said this "made [her] suspect that S had connections with the police."
- [14] On her return home from the police station, Ms. Baldera says she was intercepted by S and two other men, who beat her. S told her they were doing this because she reported him to the police. He told her that if she continued trying to report him, he would rape her youngest son, the Associate Applicant. Ms. Baldera woke up in the hospital afterwards.
- [15] After returning home from the hospital, some time passed before S returned to harass Ms. Baldera at her home in December 2018. He broke windows, kicked down the door, entered the house and began asking about Y. When the Principal Applicant refused to disclose Y's whereabouts, he began to beat her again. He told her that he would find Y no matter what. When the Associate Applicant tried to defend her, S hit him on the forehead with a gun, and then left.
- [16] At the end of 2018, Y called Ms. Baldera and told her he was in Canada.
- [17] Ms. Baldera eventually moved to Mochumi and then Lima with the Associate Applicant before travelling to Mexico. The Associate Applicant entered Canada in March 2019. Ms. Baldera joined him in Canada in April 2019, at which time they filed for refugee protection.

A. RPD Determination [18] The RPD hearing was held on April 21, 2022. At the hearing, Ms. Baldera was asked about S's influence in Peru and whether he would be able to find her if she fled to Lima. She stated that she believed he was associated with gang members, and would be able to find her through his connections to the police. When asked why she believed this, she indicated that she often saw him in the company of strange people who behaved "in a very aggressive manner." When asked why her BOC did not speak to S's alleged gang association, she did not have an explanation.

- [19] Also, during the hearing, Ms. Baldera claimed that, while Y was in Lima between 2014 and 2016, S "chased him all the way there and he started giving him a hard time and harassing him." When asked again why this detail was not included in her BOC, she replied: "I just do not know why I did not include it."
- [20] The RPD determined that the Applicants were not Convention refugees nor persons in need of protection because of the availability of a viable IFA in Lima. The determinative issues, in the RPD's view, were the IFA and, relatedly, the Applicants' credibility.

- [21] The RPD noted Ms. Baldera's failure to include in her BOC the details which arose in the hearing regarding S's gang association and his pursuit of Y in Lima. In light of this "inconsistent and evolving testimony," and considering that, according to the Applicants' narrative S did not seek them out during the brief period they lived in Tumbes, the RPD concluded there was insufficient evidence to establish that S could locate the Applicants or had the means or motivation to do so. Specifically, the RPD stated the following:
- [13] I find that it is unlikely that [S] has any influence or connections. If he does have any connections, it does not go beyond Chiclayo. I find that it is more likely than not, [the Principal Applicant] is exaggerating his influence or connections. If [S] had indeed found [Y] in Lima and harassed him, it would have been mentioned. I find the principal claimant added this incident to bolster her claim [sic]. I find this diminishes the credibility of the principal claimant.
- [22] The RPD also considered that Ms. Baldera is HIV positive. It concluded that, despite documentary evidence indicating that persons with HIV and AIDS face discrimination and harassment in Peru, it did not rise to the level of persecution. Therefore, the RPD found there was insufficient evidence to show the Applicants would be unable to successfully relocate to Lima.
- B. RAD Decision Under Review [23] By decision dated April 14, 2023, the RAD dismissed the Applicants' appeal from the negative RPD determination.
- [24] To start, the RAD panel stated that, following its own review and pursuant to the two-pronged IFA test, the Applicants failed to prove on a balance of probabilities that they would face persecution or a risk of harm in Lima, or that it would be objectively unreasonable in all the circumstances for them to seek refuge there. The RAD noted that it reviewed RPD decisions on a standard of correctness, deferring only where the RPD enjoys a meaningful advantage in assessing and weighing the oral testimony heard.
- [25] After reviewing the evidence on the record, including the RPD hearing transcript, and assessing the Applicants' submissions on appeal, the RAD agreed that the determinative issue was the Applicants' viable IFA in Lima.
- [26] The RAD relied on this Court's articulation of the two-pronged IFA test as set out in *Olusola v Canada (Citizenship and Immigration)*, 2020 FC 799 at paras 8-9.
- [27] On the first prong, it agreed with the RPD that the Applicants did not adduce sufficient evidence to establish that their agent of harm, S, could locate them in Lima or that he has the means and motivation to do so. The RAD further agreed with the RPD that the Applicants' evidence concerning the means and motivation of S was not credible due to the BOC omissions and inconsistencies arising in the RPD hearing.
- [28] With respect to persecution in Lima due to Ms. Baldera's HIV-positive status, the RAD, following its own review of the current national document package [NDP] evidence, found, like the RPD, that although the objective evidence confirms there is discrimination in Peru

on the basis of HIV status, “it is not presented as rising to the level of persecution and significant measures are being taken in Peru to address this issue.” On this issue, the RAD excerpted additional portions of the NDP evidence not identified in the RPD’s decision with respect to the discrimination and human rights efforts being made in Peru to protect those who are HIV-positive.

- [29] On the second prong of the IFA test, the RAD first noted, as the RPD did, that it is “a very high threshold” for the unreasonableness test at this stage. The RAD found that the Applicants did not discharge their onus to demonstrate that the proposed IFA would be objectively unreasonable or unduly harsh in their circumstances, or that its conditions would endanger their lives or safety.

II. ANALYSIS [30] The Applicants argue that the RAD decision on the IFA was unreasonable.

- [31] The parties agree, and I concur, that the applicable standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23, 25 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at paras 7, 39–44 [Mason]. To avoid judicial intervention, the decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (Vavilov at para 99; Mason at para 59). Reasonableness review is not a “rubber-stamping” exercise, it is a robust form of review (Vavilov at para 13; Mason at para 63). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (Vavilov at para 100).

A. IFA Analysis - First Principles [32] As explained by Justice Grammond, “[r]efugee protection is surrogate protection, as it only applies where a person cannot find protection in their country of citizenship: *Canada (Attorney General) v Ward*, 1993 CanLII 105 (SCC), [1993] 2 SCR 689, at 709. Thus, a person cannot be considered a refugee if they are safe in certain parts of their country of origin. This situation is referred to as an internal flight alternative, or IFA”: *Gomez Dominguez v. Canada (Citizenship and Immigration)*, 2020 FC 1098 at para 14. In other words, if there is an IFA in the claimant’s country of citizenship, it will negate a claim for refugee protection: *Verma v Canada (Citizenship and Immigration)*, 2025 FC 693 at para 13 [Verma].

- [33] The leading case on the test for assessing an IFA is *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517 (FCA) [Rasaratnam], where the Federal Court of Appeal set out a “two-pronged” test (at 709). There will be a valid IFA where, (1) the claimant will not be subject to a serious possibility of persecution nor to a risk of harm under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA] in the proposed IFA location; and, (2) it would not be objectively unreasonable for the claimant to seek refuge there, taking into account all the circumstances: *Bassi v Canada (Citizenship and Immigration)*, 2024 FC 910 at para 15 [Bassi].

- [34] On the first prong, an applicant “must establish that the agents of persecution have both the means and the motivation to cause harm on a prospective basis”: Verma at para 12. On the second prong, an applicant’s threshold to meet is “a high one. There must be ‘actual and concrete evidence’ of conditions that would jeopardize the applicant’s life and safety in travelling or temporarily relocating to a safe area”: Verma at para 13.
- [35] Once a potential IFA is raised, the applicant bears the onus of establishing that it is not viable: Verma at para 13; Thirunavukkarasu v Canada (Minister of Employment and Immigration), 1993 CanLII 3011 (FCA) at 594.
- [36] Both prongs need to be satisfied to conclude that a claimant has an IFA: Rasaratnam and Thirunavukkarasu at 597–598. Because the IFA test is conjunctive, to succeed, a claimant need only demonstrate that at least one of the prongs has not been established: Ullah v Canada, 2022 FC 1777 at para 22.

B. First Prong [37] First, the Applicants submit that the RAD placed too much emphasis on the inconsistencies between the BOC and the testimony at the RPD hearing about S contacting Y in Lima and S’s connections to gang members in Peru. They characterize these as “minor elaborative details” and submit that this Court has held a decision-maker is not entitled to draw a negative inference on the omission of such peripheral details, citing Akhigbe v Canada (Minister of Citizenship and Immigration), 2002 FCT 249 (CanLII) at paras 16-17. They also argue that the omissions from the BOC are “not material”, citing Naqui v Canada (Minister of Citizenship and Immigration), 2005 FC 282 at paras 22-24 [Naqui].

- [38] I do not agree that these inconsistencies/omissions from the BOC are properly characterized as minor, peripheral or immaterial. The RAD’s reasons reflect that there was an absence of evidence on S’s means and motive to pursue the Applicants in Lima. The only material evidence on this point was Ms. Baldera’s testimony about S’s gang affiliation and his apparent contact with Y in Lima. The fact that this material information was omitted from the BOC without explanation is an issue the RAD was reasonably entitled to take into account: Occilus v. Canada (Citizenship and Immigration), 2020 FC 374 at para 20.
- [39] Second, the Applicants argue that the RAD failed to conduct its own independent analysis of the record and evidence before it.
- [40] I disagree. The reasons reflect that the RAD was mindful and explicit about the correctness standard applicable to the RPD decision. Beyond the RAD’s assertions that it understood the correctness standard and conducted an independent review, the RAD went further than the RPD in many respects, noting new inconsistencies it discovered in Ms. Baldera’s evidence, and highlighting portions of the NDP evidence not discussed by the RPD. These features of the RAD’s reasons reflect that it conducted its own assessment of the case.

- [41] Third, the Applicants say that the RAD “unreasonably require[ed] corroborative evidence to establish the means and motivations of the perpetrator,” and assert that the RPD cannot find a viable IFA in the absence of sufficient evidence solely on the basis that the Applicants have not fulfilled their onus of proof, citing *Chauhdry v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8322 (FC) [Chauhdry].
- [42] On reading the RAD’s reasons, I am unable to find any suggestion that the panel was looking for corroborative evidence of S’s means and motive; it only required “sufficient evidence,” and found that Ms. Baldera’s evidence at the RPD hearing exaggerated S’s influence and connections.
- [43] With respect to *Chauhdry*, Justice Weston held in that case that the “finding of an IFA [was]... simply too speculative and cannot simply be resolved by reference to the principle that the applicant has the onus of proof...The onus of proof obviously can be relied on in cases such as this for certain purposes [sic], but there is such a paucity of evidence in this case that the finding of the existence of an IFA...[is] entirely speculative” (paras 3-4). The Applicants appear to assert, without further explanation, that the basis for the viable IFA determination here was purely speculative. This argument has no merit. On my reading of the RAD’s reasons, it clearly contemplates S’s means and motive, and even noted in its independent assessment that he did not seek the Applicants out when they lived outside of Chiclayo for two months in 2017.
- [44] The Applicants also take issue with the RAD’s analysis of the possibility of persecution due to the Principal Applicant’s HIV positive status under the first prong of the IFA test. They maintain that the RAD erred by considering the NDP evidence to suggest that the human rights policies or developmental goals in place have been effective, when all the evidence establishes only that the policies have been implemented.
- [45] The RAD made no findings concerning the efficacy of the programs it cited from the NDP evidence. Rather, it made two findings: first, that the NDP evidence reflected there is discrimination in Peru against those who are HIV positive, but it did not establish discrimination amounting to persecution. This alone was sufficient to dispose of the risk it was assessing under the first prong of the IFA case. In any case, the second finding the RAD made on the basis of the NDP evidence is that “significant measures are being taken in Peru to address the issue” – the RAD does not go into the question of efficacy, as the Applicants contend.

C. Second Prong [46] On the second prong, before the RAD, the Applicants argued it was unreasonable for Ms. Baldera to relocate to Lima because of her HIV diagnosis and a lack of sufficient health care.

- [47] They again argue that the RAD “simply agrees with the RPD’s findings.” For the reasons discussed above, I disagree and would find that the RAD’s reasons bear the hallmarks of an independent assessment.

[48] The Applicants further submit that the RAD erred by failing to properly engage or consider their evidence that there was inadequate treatment and health care available to Ms. Baldera in Lima, and that those receiving care would face maltreatment and stigma.

[49] I disagree. The RAD's reasons engage with the possibility of discrimination and stigma in Peru due to Ms. Baldera's HIV diagnosis, but find that this does not, ultimately, amount to persecution. The Applicants, in effect, disagree with the conclusions drawn by the RAD with respect to the evidence. However, disagreement with the RAD's evaluation of the evidence does not warrant the Court's intervention. It is not the Court's role to re-weigh the evidence that was before the RAD: Vavilov at para 125.

III. CONCLUSION [50] Having failed to identify a reviewable error in the RAD decision, the application for judicial review is dismissed.

JUDGMENT in IMM-8371-23

THIS COURT'S JUDGMENT is that:

The application for judicial review is dismissed.

There is no question for certification.

"Meaghan M. Conroy"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

IMM-8371-23

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ROSA AMELIA YAUCE BALDERA, JOSUE VENTURA OLAYA YAUCE v THE MINISTER OF
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