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CITIZENSHIP AND IMMIGRATION

STATUS IN CANADA

Convention Refugees and Persons in Need of Protection

Judicial review of decision of Refugee Appeal Division (RAD) of Immigration Refugee Board of Canada rejecting applicants' claim for refugee protection on grounds applicants not refugees or persons in need of protection within meaning of *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), ss. 96, 97 given two viable internal flight alternatives (IFAs) in Mexico — Applicants, citizens of Mexico, took refuge with family member in Mexico City following robbery, act of extortion — After principal applicant left for Canada, family received threatening phone calls — Refugee Protection Division (RPD) rejected applicants' refugee protection claim — RPD concluded significant omissions in principal claimant's evidence, certain hesitations in testimony undermined credibility of family's refugee protection claim — RAD found RPD had erred in concluding principal applicant not credible — However, after analyzing whether viable IFA in Mérida or Mexico City, RAD concluded family's relocation to cities identified as IFAs not unreasonable since evidence, personal circumstances of principal applicant, wife not supporting finding family could not start over, find employment, support themselves in IFAs — Issue whether RAD's IFA findings reasonable — Before dealing with issue, it was necessary to deal with issue of credibility, addressed by both applicants, respondent in respective submissions — RAD not contradicting itself by using non-credible elements from principal applicant's testimony to support own findings about viable IFAs — RAD questioned weight given by RPD to principal applicant's inconsistencies, not credibility of particular elements of testimony — Respondent argued RAD erred in determining inconsistencies raised by RPD not sufficient to taint principal applicant's overall credibility — Respondent submitted, however, despite RAD's error, not appropriate for Court to intervene since rejection of applicants' refugee protection claim only possible outcome here — Respondent's arguments not convincing — According to *Huruglica v. Canada (Citizenship and Immigration)*, 2016 FCA 93, [2016] 4 F.C.R. 157, RAD must intervene when detecting error by RPD — In *Huruglica*, Federal Court of Appeal not saying detecting error committed by RPD only way for RAD to substitute own decision for decision of RPD; rather, Federal Court of Appeal confirming RAD's duty to intervene as soon as error by RPD detected — RAD not ordinary appeal body since must act in accordance with correctness standard, requiring RAD to intervene at slightest error, unlike regular appeal body, intervening only in accordance with more stringent appeal standard — In same vein, for IRPA, s. 111(2) to make sense, one must understand provision as meaning Parliament intended to restrict RAD's jurisdiction only when RAD wants to refer matter to RPD for re-determination — Otherwise, Parliament would have mentioned in IRPA, s. 111 error required in all cases, not only when case referred to RPD for re-determination — IRPA, s. 111(1)

“does not preclude the RAD from substituting its determination of a claim for that of the RPD on a ground that the RPD did not address” — RAD must show deference when intervening on claimant’s credibility — In fact, RAD never questioned assessment of applicants’ credibility or value of oral testimony — RAD simply pointed out inconsistencies raised by RPD alone could not lead to negative conclusion about applicants’ overall credibility, provide basis for rejecting claim —RAD’s reliance on RPD’s findings regarding inconsistencies raised by RPD also militating in favour of reasonableness of RAD’s decision — RAD validated RPD’s findings of fact regarding credibility, but decided to weigh findings differently in relation to applicants’ overall credibility — RAD’s conclusion on applicants’ credibility having no fundamental flaws — Rather, situation where alleged flaws or shortcomings “superficial or peripheral to the merits of the decision” not warranting Court’s intervention — Brevity of reasons for RAD’s decision on issue of credibility not sufficient to render decision unreasonable — Regarding existence of viable IFAs, RAD expressly took into account applicants’ particular situation, analyzed applicants’ claims, fears — In view of evidence before RAD, RAD entitled to conclude applicants failed to demonstrate agents of persecution would have motivation, interest to pursue applicants in Mérida or Mexico City — Ultimately, applicants’ arguments expression of disagreement with RAD’s assessment of evidence — Applicants raised no serious shortcomings in decision; in such situation, Court must show deference to RAD’s conclusions — Application dismissed.

RODRIGUEZ SANCHEZ V. CANADA (CITIZENSHIP AND IMMIGRATION) (IMM-2165-22, 2023 FC 426, Gascon J., reasons for judgment dated March 28, 2023, 24 pp.)