

Federal Court



Cour fédérale

**Date: 20150319**

**Docket: IMM-5504-13**

**Citation: 2015 FC 351**

**Toronto, Ontario, March 19, 2015**

**PRESENT: The Honourable Mr. Justice Brown**

**BETWEEN:**

**JUAN JOSE DAVILA ALVIZURIS**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] This is an application for judicial review by Juan Jose Davila Alvizuris [the Applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 of a decision by the Immigration and Refugee Board of Canada, Refugee Protection Division [RPD], dated July 25, 2013, wherein the RPD determined that the Applicant was not a Convention refugee or a person in need of protection.

[2] The Applicant was born on April 7, 1985 and is a citizen of Guatemala by birth. He alleges fear and risk to his life at the hands of kidnappers who are aware that he witnessed a kidnapping. He made the following allegations in support of his refugee protection claim:

1. On or about June 20, 2010, the Applicant witnessed an incident as he was going to pick up his brother-in-law after work. He was driving behind a truck and saw a parked car that was waiting for the truck. Two men came to the Applicant's car and pointed their guns at him, telling him not to move or do anything or he would be killed. Other men went to the truck, beat the male driver and kidnapped the female passenger. The men told the Applicant not to say anything about what had taken place or he would be killed. Although unfamiliar with them, the Applicant had seen the faces of the driver who was beaten, the lady who was kidnapped, and some unmasked kidnappers.
2. The Applicant went to his company and notified the guards whom in turn notified the police. The Applicant then went home and never interviewed with the police. He did not go to the police because he was afraid that the armed group would act on their threats or would have been connected with the police or the Army. Nothing was reported in the news the next day. The Applicant believes that the police intentionally wanted this incident to be low profile. The Applicant later learned that the victim was a member of a very wealthy family and was being ransomed. The victim's brother, whose last name is Gonzalez Eliazar, paid the ransom and the victim was released. The police never succeeded in capturing the kidnappers.

3. The Applicant feared for his life as he had witnessed the incident.
4. The Applicant moved to Retalhuleu, some 150-200 kilometres from the capital. He believes that the police had transferred their report to the attorney general in the meantime and that an investigation was being initiated. The Applicant was made aware that suspicious unknown individuals had come looking for him at his former workplace in Guatemala City on at least three occasions, inquiring about his whereabouts with his co-workers and the administration. One of the Applicant's colleagues, Jose Pio Ordonez, was harassed and threatened. Mr. Ordonez left for Santa Lucia Milpas Altas.
5. The Applicant left Guatemala for Canada when he learned that people were looking for him on or about September 23, 2010, with a sister named Ruth whose husband was also being persecuted. The Applicant has an uncle, Jose Vicente Alvizuris, who is a Canadian citizen. The Applicant spent some time in the USA but did not claim refugee status there because he was told that it was almost impossible for Guatemalans to obtain status there but also because his intention was to come to Canada.

[3] The RPD rejected the Applicant's claim on July 25, 2013. He filed an application for leave and judicial review on August 20, 2013. Leave to apply for judicial review was granted December 16, 2014.

[4] The determinative issue for the RPD was credibility. In *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 57, 62 [*Dunsmuir*], the Supreme Court of Canada held that a standard of

review analysis is unnecessary where “the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question.”

It is well established that reasonableness is the applicable standard of review to credibility

findings: *Cetinkaya v Canada (Minister of Citizenship and Immigration)*, 2012 FC 8 at para 17.

In this connection I note that findings of credibility are the heartland of the RPD’s jurisdiction:

*Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 at 239 (CA).

[5] In *Dunsmuir* at para 47, the Supreme Court of Canada explained what is required of a court reviewing on the reasonableness standard of review:

A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[6] The RPD made the following findings. My comments follow each:

1. The RPD noted discrepancies between the Applicant’s amended Personal Information Form [PIF] and his oral testimony. The Applicant says that the driver of the vehicle was taken out of the vehicle at gunpoint, beaten up and left on the ground, but alleged at the hearing that the driver was beaten up while he was still in the vehicle. When asked to explain this discrepancy, the Applicant suggested that the driver was beaten when he was coming out of the vehicle. The RPD drew a negative inference with respect to the Applicant’s credibility.

Court comment: The RPD asked the Applicant a number of questions on and around this issue, came to a conclusion that there was a difference between his answers on his amended PIF (submitted fairly recently in terms of the hearing date) and his testimony at the hearing. For the RPD, the issue came down to whether the Applicant had testified that the driver of the car was beaten while still in the pickup, or outside it. The RPD asked the Applicant to explain what is considered the difference to be and gave him an opportunity to explain. In the result, having concluded that the Applicant testified the beating took place while the driver was still in the pickup, the RPD found the explanation unsatisfactory, holding it was reasonable to expect consistency between oral testimony and evidence in the PIF narrative, and drew a negative inference. In my view, having reviewed the record, the RPD erred in its summary of the Applicant's testimony because he had not testified that the beating took place while the driver was still in the pickup. In my view, the RPD finding is not reasonable, but neither do I consider this aspect of the Applicant's testimony critical to his claim.

2. In the immigration notes, the Applicant testified that only one man came to his car. However, in his PIF and at the hearing, the Applicant testified that two men came to his car. The Applicant could not explain this discrepancy and simply reiterated that there were two men. The RPD determined that, on a balance of probabilities, the Applicant was not approached by armed men during an alleged kidnapping incident.

Court comment: This finding is reasonable. This is the central event that impelled the Applicant to leave and seek asylum in Canada. He must be expected to know

if he was assaulted by one man or by two. It is unreasonable for him to be inconsistent in his description of this assault between what he told the officer in his Port of Entry [POE] notes, as read back to him and certified by the official translator, and his PIF narratives and testimony on this critical point. The RPD probed the Applicant and gave him an opportunity to afford an explanation. There is no basis on the record to find as the Applicant suggests that the POE notes (in fact, Form IMM 5611) are the result of mistakes made by either the officer or by the translator. In any event, this is the very sort of assessment lying at the heart of the RPD's jurisdiction. In my view this finding is within the range of reasonable outcomes permitted by *Dunsmuir*.

3. The Applicant testified that two of the five kidnappers had their faces covered. In the POE notes, it was said that all five men had their faces covered. The Applicant explained that this discrepancy is because he was asked to summarize the story. The RPD was not satisfied with this explanation, noting that summarizing a story may lead to a condensed version of it, but not to different versions. The RPD drew a negative inference with respect to the Applicant's credibility.

Court comment: Here again the Applicant gives very different information on the central and critical incident which he says caused him to seek asylum in Canada. Whether there were five as he originally advised, or only two masked men who carried out the alleged kidnapping and beating of the woman and her driver, and the alleged assault on the Applicant personally, is something in respect of which one may reasonably expect the victim to be consistent. Certainly, the conflict in the evidence found by the RPD exists. The RPD probed the Applicant on it, and

gave him an opportunity to explain the inconsistency as indeed it did on every point. This is the very sort of factual inconsistency the RPD is intended to resolve. It did so and in my view acted reasonably and came to a conclusion within the reasonable range of permitted outcomes.

4. In the amended PIF, the security guards called the police from the workplace. At the hearing, the Applicant testified that the police came by the scene of the alleged kidnapping and the guards stopped them and told them what had happened. The Applicant explained that the interpreter made the mistake. The RPD drew a negative inference with respect to the Applicant's credibility.

Court comment: In my view, there was a conflict in the material, and therefore the RPD was obliged to consider and assess the issue. It did so in clear and intelligible reasons. In my view, the RPD's assessment falls within the range of reasonable outcomes described by *Dunsmuir*. I note that again here, the Applicant suggests interpreter error; however this argument must be rejected because there is no basis on which to make any such finding.

5. The Applicant omitted a part about the police in his oral testimony that was part of his amended narrative. The Applicant explained that he meant guards and that the interpreter made a mistake. The RPD drew a negative inference with respect to the Applicant's credibility.

Court comment: Again, there is no dispute that this evidence was in his amended PIF, which as noted was prepared relatively close to the hearing, but not in the Applicant's oral testimony. I would not expect refugee claimants to memorize and

recite every fact in oral testimony set out in their PIF(s). However the RPD was within its jurisdiction to follow up on points such as this and its assessment of responses is a key part of its mandate. In my view, on the record, its assessment is reasonable. The Applicant was asked and given an opportunity to explain this omission, which explanation the RPD found unsatisfactory. Once again, the Applicant blamed the interpreter, but did so without an evidentiary foundation. Interpreter errors cannot become a means to explain away every inconsistency on judicial review. Interpreter errors, in my view, should only be entertained at this level where they were squarely raised with the decision-maker below or are reasonably grounded in the record. This is consistent with Justice Campbell's decision to accept an argument of interpreter error where the error was on the record in *Grazhd v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 8268. There the Court said: "I am satisfied that, on the face of the evidence on the record, a legitimate error in interpretation of this diploma was made by the immigration officer."

6. The Applicant testified at the hearing that his friend and colleague, Mr. Ordonez, left the company sometime in 2012 but did not remember when. In his PIF narrative however, the Applicant said that Mr. Ordonez left the company in May 2011. The Applicant's explanation was that he could not remember the date. The RPD found this explanation unsatisfactory.

Court comment: The RPD hearing was in March, 2013, not that long after the dates of the alleged departure. There is no doubt that the RPD should not criticize claimants for trivial mistakes over less relevant dates, in respect of which there is



ample authority: *Kanagarasa v Canada (Minister of Citizenship and Immigration)*, 2015 FC 145 at paras 12-13; *Venegas Beltran v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1475 at paras 3-6. That said the date his friend and colleague left the company is something the Applicant would reasonably know. On balance, in my view, and given the RPD's key role in determining credibility, the RPD's assessment is reasonable as per *Dunsmuir*.

[7] Overall, the Applicant disagrees with the RPD decision and points to what he describes as mistakes made either by the RPD itself, or transcription or interpretation errors made by border officers or translators. In reality, the Applicant is asking this Court to reweigh the evidence before the RPD. While I have accepted that the RPD failed in one non-critical respect, read as a whole, I find that its reasons are justified, transparent and intelligible. Taken and read as a whole, this decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[8] Neither party proposed a question for certification, and none arises.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed, no question is certified, and there is no order as to costs.

"Henry S. Brown"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-5504-13

**STYLE OF CAUSE:** JUAN JOSE DAVILA ALVIZURIS v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 16, 2015

**JUDGMENT AND REASONS :** BROWN J.

**DATED:** MARCH 19, 2015

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