

Federal Court



Cour fédérale

Date: 20160614

Docket: IMM-3932-15

Citation: 2016 FC 659

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, June 14, 2016

In the presence of the Honourable Mr. Justice Gascon

BETWEEN:

JUAN CAMILO GOMEZ FLOREZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Juan Camilo Gomez Florez, is a citizen of Colombia. Mr. Florez is applying for judicial review of a decision rendered on July 8, 2015, by the Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada. In its decision, the RPD

refused to recognize Mr. Florez as a Convention refugee under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27, because his account is not credible and he receives state protection in Colombia.

[2] Mr. Florez argues that the RPD erred in rendering its decision when it doubted his credibility and when it found that Colombia could offer him the alleged protection. Mr. Florez therefore asked the Court, through this application for judicial review, to set aside the RPD's decision and return the case to the RPD so that his request could be reassessed by a differently constituted panel in light of all the evidence submitted.

[3] The sole issue is to determine whether the RPD's decision was reasonable.

[4] For the reasons below, Mr. Florez's application for judicial review must be dismissed. In fact, I cannot identify any error in the RPD's decision that would justify the Court's intervention. I find the RPD's conclusions regarding Mr. Florez's account lacking credibility and the matter of state protection to be reasonable and to clearly fall within the possible, acceptable outcomes in the circumstances.

II. Background

A. *The Facts*

[5] Mr. Florez is from the city of Cali in Colombia. In October 2014, Mr. Florez began frequenting a park in the Las Cascadas neighbourhood of Cali, which is known as a haven for

drug users, in order to give out information to youth and help them stop using substances. When he heard some youths saying that members of the criminal organization Los Urabeños were using them to transport drugs, Mr. Florez advised them not to do so, not to join Los Urabeños, and to denounce them.

[6] In December 2014, two men threatened Mr. Florez when he left the park, shoving him and telling him not to interfere in Los Urabeños business. After the assault, Mr. Florez went to the office of the Attorney General in Cali. An employee took his deposition and gave him a form to request protection from the national police. An officer then told him that the Colombian police do not have the necessary resources to protect him, and that officers would go to his home to recommend measures to take and provide him with a list of numbers to call in an emergency.

[7] Later in December, Mr. Florez received a call in which the caller referred to his visit to the Attorney General's office, saying that Mr. Florez was now considered an enemy of Los Urabeños. The caller threatened to kill Mr. Florez.

[8] The next day, Mr. Florez spoke with the ombudsman's office, and was told that the office would refer his case to the police to accelerate the ongoing investigation. The ombudsman's representative also advised that Mr. Florez move. That same day, Mr. Florez moved in with a friend of his parents in the city of Pereira, more than 200 kilometres from Cali. In January 2015, a police officer visited Mr. Florez's parents at their home in Cali and gave them written recommendations to ensure Mr. Florez's safety.

[9] On January 21, 2015, an armed man grabbed Mr. Florez in the street in Pereira and tried to abduct him. Mr. Florez successfully escaped his attacker and fled the scene in a taxi. Mr. Florez then went to the Attorney General's office in Pereira to file a complaint. The employee recommended that he return to Cali to modify his complaint from December 2014, which was already under investigation. The Pereira police advised that he leave the city.

[10] Two days later, Mr. Florez headed to Bogota, 300 kilometres from Pereira, where he moved in with a cousin. Before the end of January, a threatening letter from Los Urabeños arrived at the home of Mr. Florez's parents in Cali. The letter said that Mr. Florez was a [TRANSLATION] "military target" and that he escaped in Pereira but next time "we won't miss you, death to our enemies, we have contacts everywhere."

[11] Mr. Florez obtained his passport on January 28, 2015, and left Colombia for the United States on February 2. He claimed refugee protection at the Canadian-American border on February 6.

B. *The RPD's decision*

[12] In its decision, the RPD first noted that Mr. Florez failed to provide reasonable explanations for some of the main elements of his story, meaning it lacks credibility. For example, Mr. Florez said that the person who received his complaint at the Attorney General's office in Cali did not faithfully record his account, notably omitting his statements encouraging the youths in the park to denounce the paramilitary organization and not to be recruited into their ranks. However, the copy of the complaint filed by Mr. Florez expressly refers to these acts. The

RPD finds that in unduly seeking to cast doubt on the efforts of the Colombian state to protect him, Mr. Florez damaged his credibility.

[13] The RPD further finds that Mr. Florez did not satisfactorily explain how he managed to escape his assailants during the incident in Pereira. In its decision, the RPD observed that Los Urabeños are mainly commanded by former paramilitary members of the Revolutionary Armed Forces of Colombia [FARC]. The RPD therefore has no doubts about this criminal organization's effectiveness and finds that [TRANSLATION] “the assailants failing in their attack demands an explanation that the refugee protection claimant was unable to provide.” The RPD thus concludes that the assault in Pereira reported by Mr. Florez did not take place.

[14] The RPD also noted that Mr. Florez's behaviour was not that of a person fearing for his life. Since his attackers had information about him, the RPD finds it unlikely that he would choose to go live with a friend of his parents in Pereira and then a cousin in Bogota. In moving in with a family member in Bogota, Mr. Florez erased any advantage he might have gained by leaving Pereira. Moreover, Mr. Florez did so even though his attackers had already managed to find him once before when he left Cali to live with a friend of his parents in Pereira. Mr. Florez knew about alternative solutions available to him, and also had the financial means to retain the services of a lawyer or buy a plane ticket.

[15] Finally, the RPD considers Mr. Florez's explanations of his failure to request refugee protection in the United States to be unsatisfactory. The RPD did not believe Mr. Florez when he claimed to be afraid of discrimination or mistreatment from American authorities.

[16] Mr. Florez also submitted as evidence a letter from his counsel attesting that Mr. Florez had received death threats and referring to the assault he suffered in Pereira. The RPD assigns no probative value to this evidence, as there is no way for counsel to attest that an event truly occurred if he was not present for it. The RPD also rejects the letter from Los Urabeños allegedly received by Mr. Florez's parents at their home, which threatened Mr. Florez and stated that Los Urabeños knew he was living in Pereira. Without any information on its origin, the RPD finds that this letter is not sufficient to establish Mr. Florez's credibility.

[17] For all these reasons, the RPD rejects Mr. Florez's claim for refugee protection.

C. *Standard of review*

[18] It is well established that, with regard to the credibility or plausibility of a refugee protection claimant, the RPD's conclusions are factual and command a high degree of judicial deference, considering the role of the trier of fact in the administrative tribunal (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 [*Khosa*] at paragraph 59; *Lawal v Canada (Citizenship and Immigration)*, 2015 FC 155 at paragraph 9; *Martinez Giron v Canada (Minister of Citizenship and Immigration)*, 2013 FC 7 at paragraph 14; *Dong v Canada (Minister of Citizenship and Immigration)*, 2010 FC 55 at paragraph 17).

[19] When it comes to refugee matters, the assessment of credibility is the very core of the expertise of administrative tribunals, and it is closely related to the facts of a given case (*Pepaj v Canada (Minister of Citizenship and Immigration)*, 2014 FC 938 at paragraph 13, *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paragraphs 7-8). The RPD

is therefore better positioned to assess the credibility of a refugee claimant, since it can see the claimant in a hearing, observe the claimant's manner, and hear the claimant's testimony. The tribunal thus has the opportunity and the capacity to judge the claimant's testimony, behaviour, candidness, and spontaneity of response, as well as the coherence and uniformity of the claimant's statements. Moreover, the RPD benefits from the specialized knowledge of its members in assessing evidence that deals with facts related to their field of expertise (*El-Khatib v Canada (Citizenship and Immigration)*, 2016 FC 471 at paragraph 6).

[20] Since it is a mixed issue of fact and law, the applicable standard of review for questions of credibility and assessment of evidence by the RPD is therefore that of reasonableness (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (FCA) [*Aguebor*] at paragraph 4; *Bikoko v Canada (Citizenship and Immigration)*, 2015 FC 1313 at paragraph 8; *Cortes v Canada (Citizenship and Immigration)*, 2014 FC 598 at paragraph 12; *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at paragraph 26). In such questions of credibility and assessment of evidence, the Court must not substitute its point of view for that of the administrative tribunal, even if that point of view could, in the Court's eyes, lead to a better result (*Khosa* at paragraph 59). The Court must only intervene if the decision-making process fails to be transparent and intelligible, and if the decision does not “fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] at paragraph 47).

[21] The reasons behind a decision are considered to be reasonable “if the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine

whether the conclusion is within the range of acceptable outcomes” (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 [Newfoundland Nurses] at paragraph 16). In this context, the Court must exercise deference toward the tribunal's decision. Its mission is not to weigh the case's evidence once again or to interfere with the tribunal's conclusions of fact; instead, it should limit itself to determining whether a conclusion is irrational or arbitrary (*Mikhno v Canada (Minister of Citizenship and Immigration)*, 2010 FC 385 at paragraphs 32-33; *Diallo v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1062 at paragraph 30).

[22] To assess reasonableness, the Court must review the tribunal's reasons, but it can also examine the case itself, if necessary, to assess the reasonableness of the decision (*Newfoundland Nurses* at paragraph 15). That said, judicial review is not a “line-by-line treasure hunt for error” (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at paragraph 54).

[23] The assessment of a refugee protection claimant's credibility must be transparent and intelligible (*Hilo v Canada (Minister of Employment and Immigration)* (1991), 130 NR 236 (FCA) [*Hilo*] at paragraph 6). Thus, the tribunal's reasons must constitute an assessment of the applicant's credibility expressed “in clear and unmistakable terms.” Conversely, a vague and general analysis would remain insufficient, since a tribunal cannot be satisfied with drawing conclusions on credibility without explaining why or how that credibility is disputed or appears unsatisfactory.

[24] This standard of reasonableness is also applied to the RPD's conclusions concerning state protection (*Canada (Citizenship and Immigration) v Flores Carrillo*, 2008 FCA 94 [*Flores Carrillo*] at paragraph 36; *Hinzman v Canada (Minister of Citizenship and Immigration)*, 2007 FCA 171 at paragraph 38; *Ruano v Canada (Citizenship and Immigration)*, 2015 FC 1023 at paragraph 36; *Orellana Ortega v Canada (Minister of Citizenship and Immigration)*, 2012 FC 611 at paragraph 7).

III. Analysis: Is the RPD's decision reasonable?

[25] According to Mr. Florez, the RPD erred in its assessment of his credibility and in its analysis of the state protection offered in Colombia.

[26] Mr. Florez first of all claims that the RPD's conclusions concerning his lack of credibility are unreasonable. He specifically claims that the RPD erred in considering his case incomplete, in doubting his uncontradicted testimony on the events in Pereira, in finding his behaviour inconsistent when seeking refuge in Colombia, and in criticizing his failure to seek refugee protection in the United States. According to Mr. Florez, concrete reasons supported by cogent evidence must exist before a refugee protection claimant is disbelieved (*Vodics v Canada (Citizenship and Immigration)*, 2005 FC 783 at paragraph 11). Mr. Florez argues that, to conclude there is a lack of credibility based on contradictions or differences, there must be tangible evidence, not simply minor inconsistencies.

[27] I do not agree with Mr. Florez's analysis concerning the issues of credibility and the RPD's assessment. In short, Mr. Florez presents his objection to the RPD's conclusions without

also showing how the decision is unreasonable. The Court instead shares the Minister's opinion that the RPD considered all the evidence in the record and that the evidence amply supports the RPD's findings on Mr. Florez's lack of credibility. The assessment of the evidence and his credibility is a matter of the RPD's discretion, and it is not up to the Court to substitute its own interpretation.

[28] The principles governing the manner in which an administrative tribunal must assess the credibility and plausibility of a refugee protection claimant's account can be summarized as follows. First of all, note that the presumption of truthfulness laid out in the *Maldonado v Canada (Minister of Employment and Immigration)* [1980] 2 FC 302 (FCA) decision in paragraph 5 is not unchallengeable, and the applicant's lack of credibility as a refugee protection claimant suffices to rebut it. Furthermore, even though they may be insufficient when taken individually or in isolation, the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee protection claimant's account can support a negative conclusion about his credibility (*Sary v Canada (Minister of Citizenship and Immigration)*, 2016 FC 178 at paragraph 20; *Quintero Cienfuegos v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262 at paragraph 1).

[29] Of course, the RPD cannot base its findings regarding the claimant's lack of credibility on minor contradictions arising in evidence that is secondary or peripheral to the refugee protection claim. The tribunal must therefore not delve too deeply in its approach or conduct a "microscopic" analysis of the evidence. In other words, not all inconsistencies or implausibilities will support a negative finding of credibility; such findings should not be based on microscopic

examination of issues irrelevant or peripheral to the claim (*Attakora v Canada (Minister of Employment and Immigration)* (1989), 99 NR 168 (FCA) at paragraph 9; *Cooper v Canada (Minister of Citizenship and Immigration)*, 2012 FC 118 [*Cooper*] at paragraph 4; *Akhigbe v Canada (Minister of Citizenship and Immigration)* 2002 FCT 249 at paragraph 16).

[30] However, a lack of credibility concerning the central elements of a claim could extend to other elements of the refugee protection claim (*Sheikh v Canada (Minister of Employment and Immigration)*, [1990] FCJ No 604 (FCA) at paragraphs 7-9) and generalized to all of the documentary evidence presented to corroborate a version of the facts.

[31] The RPD is also entitled to draw conclusions concerning the credibility of a refugee protection claimant based on implausibilities, common sense and rationality, and to reject unchallenged evidence if it is inconsistent with the probabilities affecting the case as a whole (*Hilo* at paragraph 4; *Shahamati v Canada (Employment and Immigration)*, [1994] FCJ No 415 (FCA) at paragraph 2; *Yin v Canada (Citizenship and Immigration)*, 2010 FC 544 at paragraph 59; *Hernandez Utrera v Canada (Citizenship and Immigration)*, 2007 FC 1212 at paragraph 61; *Toora v Canada (Citizenship and Immigration)*, 2006 FC 828 [*Toora*] at paragraph 44). Nonetheless, the RPD's conclusions and inferences must always remain reasonable and be formulated in clear and unmistakable terms (*Cooper* at paragraph 4).

[32] The RPD's findings on Mr. Florez's lack of credibility in this case are based on several valid grounds. It suffices to mention the following: the fact that Mr. Florez did not satisfactorily explain in what manner the employee of the Attorney General's office in Cali incorrectly

recorded his deposition; the implausibility of the incident in Pereira; Mr. Florez's behaviour after the alleged incidents; and Mr. Florez's failure to seek refugee protection in the United States. These are central elements of Mr. Florez's account.

[33] Mr. Florez also mistakenly argues that there were no inconsistencies in his behaviour when he went to live with his cousin after the alleged incident in Pereira, since he felt safe with people he trusted, who knew about his situation and were protecting him. However, given that he was tracked down in Pereira when he was staying with a family friend, the RPD can logically conclude that staying with a cousin in Bogota would cancel out any advantage he would have gained from leaving Pereira. The RPD supported this reasoning by noting that Mr. Florez went to stay at a hotel after the assault and therefore knew the options available and accessible to him. The RPD can reject evidence if it is not in “harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions” (*Toora* at paragraph 44).

[34] The Court definitively finds that the RPD's analysis of Mr. Florez's credibility is not tainted by any reviewable error. The Court must show significant deference to the RPD and the RAD with respect to the assessment of refugee claimants' credibility, since they are the very core of the RPD's authority (*Dunsmuir* at paragraph 53; *Aguebor* at paragraph 4; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paragraph 22). There is no doubt in this case that the RPD's determinations to support its conclusions about Mr. Florez's non-credibility are reasonable and fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[35] Moreover, the fact that a piece of evidence is not expressly dealt with in a decision does not render it unreasonable when there are sufficient grounds to assess the tribunal's reasoning (*Corzas Monjaras v Canada (Minister of Citizenship and Immigration)*, 2010 FC 771 at paragraph 20; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No. 1425 [*Cepeda-Gutierrez*] at paragraph 16). The RPD is presumed to have weighed and examined all the evidence submitted to it, unless it is demonstrated not to have done so (*Newfoundland Nurses* at paragraph 16; *Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598 (FCA) at paragraph 1). In this case, I am satisfied that the RPD considered all the evidence, even if it does not refer directly to all its components. It is only when a tribunal is silent on evidence clearly pointing to the opposite conclusion that the Court can intervene and infer that the tribunal overlooked the contradictory evidence when making its finding of fact (*Cepeda-Gutierrez* at paragraph 17). That is not the case here.

[36] The Court's mission is not to reassess pieces of evidence in the record; rather, it must limit itself to finding whether a conclusion is irrational or arbitrary. According to the reasonableness standard, it is sufficient that the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, and the Court not substitute its own opinion for that of the panel. The arguments put forward by Mr. Florez simply express his disagreement with the RPD's assessment of the evidence and in fact ask the Court to prefer its own assessment and reading to that of the tribunal. However, this is not the Court's role in matters of judicial review (*Kanthasamy v Canada (Minister of Citizenship and Immigration)*, 2014 FCA 113 at paragraph 99). The reasons for the RPD's decision on Mr. Florez's lack of credibility have the qualities of justification, transparency and intelligibility, and allow it to be

determined that the conclusion falls within the range of possible, acceptable outcomes. There is therefore no reason for the Court to intervene.

[37] On the matter of state protection, Mr. Florez argues that the RPD erred in saying that Colombian authorities took measures proportional to the threats he received. Mr. Florez states that he sought the protection of his country's authorities every time he needed it, but they did nothing concrete to help him. He argues that the RPD did not consider the evidence that corroborated his version of the facts.

[38] I do not share Mr. Florez's opinion.

[39] The RPD's finding on the question of state protection is secondary, since the tribunal could validly reject Mr. Florez's refugee protection claim based on his lack of credibility without evaluating the question of state protection. Furthermore, it falls upon the refugee claimant to exhaust all possible remedies in his or her country before requesting international protection. It was not unreasonable for the RPD to conclude that Mr. Florez did not make use of all the remedies available to him in Colombia, especially in Pereira, before requesting protection from Canada.

[40] In fact, the RPD based its finding on the following elements: Colombian authorities, at every step, took measures proportional to the threats against Mr. Florez; Mr. Florez did not go to the Colombian police for the urgent protection recommended by the ombudsman's office in December 2014; the reaction time of the police in January 2015 was quick and far from

unreasonable; the evidence does not show that the ombudsman's office advised Mr. Florez to move to Pereira in December 2014; Mr. Florez's counsel in Colombia did not take legal measures to contest the refusal by the Attorney General's office to modify the complaint in December 2014 following the assault in Pereira; and Mr. Florez did not go to other police stations or other officials in Pereira.

[41] On the matter of state protection, a refugee protection claimant must rebut the presumption of adequate state protection with clear and convincing evidence (*Moran Gudiel v Canada (Minister of Citizenship and Immigration)*, 2015 FC 902 [*Moran Gudiel*] at paragraph 40). Perfect state protection is not required, only adequate protection (*Moran Gudiel* at paragraph 31; *Ferko v Canada (Citizenship and Immigration)*, 2012 FC 1284 at paragraph 44).

[42] In this case, Colombian authorities took measures to offer protection to Mr. Florez, and he cannot claim that the authorities were unable to protect him. In fact, the capacity of the Colombian police to protect Mr. Florez was only compromised by his failure to exhaust all remedies at his disposal.

[43] Tribunals must presume that a state is capable of protecting its own citizens. This presumption can only be overruled if there is clear, convincing confirmation of the state's inability to ensure the refugee claimant's protection (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at page 724; *Flores Carrillo* at paragraphs 17-19, 28 and 30; *Canada (Minister of Employment and Immigration) v Villafranca*, [1992] FCJ No 1189 (FCA) at paragraph 6). This burden of proof falls on the refugee claimant.

[44] In Mr. Florez's case, the RPD carefully examined the documentary evidence and the principles of state protection, as well as Mr. Florez's unsuccessful attempts to obtain protection from Colombian authorities before fleeing to the United States and Canada. A refugee claimant's decision to flee before the police have time to conduct an investigation and carry out a suitable response is not equivalent to the absence of state protection.

[45] Furthermore, the Minister rightly mentions the Federal Court of Appeal in *Canada (Minister of Citizenship and Immigration) v Zeng*, 2010 FCA 118 [*Zeng*] at paragraph 19, which states that asylum shopping is incompatible with the surrogate dimension of international refugee protection. Also, Mr. Florez's failure to make a previous request for asylum in the United States is incompatible with the principle established by the *Zeng* decision.

[46] I therefore find that, under these circumstances, the RPD's decision on Colombian state protection is not at all unreasonable.

IV. Conclusion

[47] For the foregoing reasons, Mr. Florez's application for judicial review is dismissed. The RPD's decision in refusing his refugee protection claim is transparent and intelligible, and its conclusions regarding Mr. Florez's lack of credibility fall within the range of possible, acceptable outcomes which are defensible in respect of the facts and law. Furthermore, the RPD committed no error in its assessment of the protection offered by the Colombian state.

[48] The parties did not raise any serious questions of general importance for certification in their submissions, and I agree that there are none in this case.

JUDGMENT

THE COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs;
2. No serious question of general importance is certified.

“Denis Gascon”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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