

Federal Court



Cour fédérale

**Date: 20160620**

**Docket: IMM-5156-15**

**Citation: 2016 FC 684**

**Ottawa, Ontario, June 20, 2016**

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

**BETWEEN:**

**LUZ NELLY OROZCO CORTES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Introduction**

[1] The Refugee Protection Division [RPD] of the Immigration and Refugee Board rejected Luz Nelly Orozco Cortes' claim for refugee protection in Canada based on an adverse finding of credibility. Ms. Cortes has sought judicial review of that decision pursuant to s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the IRPA].

[2] Credibility findings are the “heartland” of the RPD’s jurisdiction. The RPD had the benefit of hearing Ms. Cortes’ testimony and assessing her demeanour. While Ms. Cortes makes a compelling argument that the RPD unreasonably discounted her corroborative evidence as having “no probative value”, I am satisfied that the documents were not rejected solely because of the adverse credibility finding. The application for judicial review is therefore dismissed.

## II. Background

[1] Ms. Cortes is 40 years old. She based her claim for refugee protection on her fear of the Revolutionary Armed Forces of Colombia [FARC], Colombia’s largest guerilla group. Her Personal Information Form [PIF] included the following allegations.

[2] In 2004, Ms. Cortes’ uncle hired her to manage three bingo halls that were operated illegally. The FARC demanded that Ms. Cortes’ uncle pay “protection money”. The bingo halls went bankrupt in mid-2006. Due to her uncle’s failure to pay the FARC, the group began to threaten Ms. Cortes’ family.

[3] In January 2007, the FARC left a note at Ms. Cortes’ residence demanding three million pesos. In April 2007, the FARC sent her family another note indicating that the family was now a “military objective”. On May 25, 2007, Ms. Cortes’ cousin was shot and killed. Her other cousin, whom she considered a brother, went into hiding, but she continued to work. In June 2007, she took a brief leave of absence from her job in foreign trade and also went into hiding. On July 7, 2007, Ms. Cortes’ uncle requested protection from the public prosecutor’s office in Colombia.

[4] On August 6, 2007, Ms. Cortes' cousin was shot and killed. Shortly thereafter, on August 17, 2007, two FARC members riding on a motorcycle attempted to murder Ms. Cortes while she was driving.

[5] In March 2008, Ms. Cortes resigned from her job and lived in hiding until she fled to Mexico in December 2009. She then travelled to the United States of America, where she remained for a year and four months. She arrived in Canada on April 18, 2010 and made a claim for refugee protection at the border.

### III. Decision under Review

[6] In a decision dated October 20, 2015, the RPD refused Ms. Cortes' refugee claim on the grounds that she was neither a Convention refugee nor a person in need of protection as defined in ss 96 and 97 of the IRPA.

[7] The RPD accepted Ms. Cortes' identity as a citizen of Colombia, and also accepted that some of her family members had been murdered by the *Autodefensas Unidas de Colombia* [AUC], another guerilla group in Colombia. However, the RPD found that the central element of Ms. Cortes' claim, namely that she feared extortion by the FARC, was not credible. The RPD based its conclusion on the following omissions and inconsistencies in her evidence.

[8] First, Ms. Cortes did not mention in her PIF that she had worked as the manager of her uncle's bingo halls for three years. The RPD considered this omission to be significant because her fear of the FARC was allegedly due to the non-payment of a debt arising from the operation

of the bingo halls. The RPD noted that she did include this occupation in an amended PIF that was submitted one month later. The RPD questioned Ms. Cortes about this omission, and was not satisfied with her explanation that she thought she was required to list in her PIF only her legitimate occupations, not her illegal operation of the bingo halls.

[9] Second, Ms. Cortes provided inconsistent testimony regarding when her uncle's bingo halls had opened and closed. She also provided varying answers when asked how many threats she had received from the FARC. In her PIF, she mentioned receiving two threats in 2007. At the hearing, she testified that the FARC had sent her three threatening notes. When asked about a fourth note that appeared in the record, she acknowledged that there were in fact four threats. She also provided inconsistent testimony regarding when she received the final threat from the FARC. The RPD was not satisfied with her explanation that she was nervous and that her memory was affected by her recent pregnancy.

[10] Third, Ms. Cortes failed to provide corroborative evidence that the bingo halls ever existed. The RPD acknowledged that there is a presumption that a refugee claimant's sworn testimony will usually be sufficient to establish facts without corroborative evidence. However, given the RPD's credibility concerns, it held that corroborative evidence was necessary to substantiate Ms. Cortes' claim regarding the bingo halls.

[11] Fourth, the RPD found that the corroborative evidence submitted by Ms. Cortes in support of her claim had no probative value. Having rejected Ms. Cortes' credibility, it held that the documentary evidence was insufficient to corroborate her claim.

[12] Fifth, the RPD considered some of Ms. Cortes' actions to be inconsistent with her alleged fear of the FARC. The RPD observed that she continued to attend her workplace for over a year after her cousins were murdered, and after the FARC allegedly attempted to murder her. When questioned, Ms. Cortes explained that she felt safe at work because it offered security. The RPD was not satisfied with this explanation, and found that her daily commute to work conflicted with her testimony that the FARC was a powerful group that could locate her anywhere in the country.

[13] Finally, the RPD considered the documents that Ms. Cortes submitted post-hearing to demonstrate that pregnancy may affect a woman's short-term memory. However, it was not persuaded that Ms. Cortes' pregnancy adversely affected her ability to testify consistently regarding historical matters that were relevant to her claim.

#### IV. Issue

[14] The sole issue raised by this application for judicial review is whether the RPD's decision was reasonable.

#### V. Analysis

[15] The RPD's credibility findings are owed the highest degree of deference, and are subject to review by this Court against the standard of reasonableness (*Dunsmuir v New Brunswick*, 2008 SCC 9; *Tariq v Canada (Citizenship and Immigration)*, 2015 FC 692 at para 10).

[16] Ms. Cortes says that the RPD engaged in a microscopic analysis of the evidence, in particular her failure to include her part-time job as manager of the bingo halls in her initial PIF. However, her management of the bingo halls for a period of three years was central to her claim for refugee protection. This was the reason she gave for her fear of persecution by the FARC. In my view, it was open to the RPD to regard this as a significant omission.

[17] Ms. Cortes also says that she did not mention the bingo halls in her reports to the police because they were illegal. While this may appear to be a reasonable explanation, it was not offered to the RPD at the hearing. The RPD cannot be criticized for failing to accept an explanation that was never given.

[18] The RPD acknowledged that claimants may be nervous during hearings and may have difficulty recalling exact dates. However, the RPD noted that Ms. Cortes was able to recall exact dates in other parts of her testimony. It also noted that she is an educated woman. It was open to the RPD to find that her inability to spontaneously and consistently answer simple questions regarding the timing of significant events detracted from her credibility.

[19] It was also reasonable for the RPD to draw an adverse inference from Ms. Cortes' inability to remember that the FARC had sent her a fourth threatening note in 2007. The RPD found that the summer of 2007 was a significant time in Ms. Cortes' life. Her cousin was murdered and the FARC attempted to kill her as well. The RPD reasonably found that her failure to mention a fourth threatening note from the FARC shortly after the assassination attempt was a significant omission.

[20] Credibility findings are the “heartland” of the RPD’s jurisdiction (*Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at para 7, [2003] FCJ No 162 (Fed TD). The RPD had the benefit of hearing Ms. Cortes’ testimony and assessing her demeanour. Its credibility findings are owed significant deference.

[21] Ms. Cortes makes a compelling argument that the RPD unreasonably rejected her corroborative evidence as having “no probative value”. She relies on this Court’s decision in *Chen v Canada (Minister of Citizenship and Immigration)*, 2013 FC 311 at paragraphs 20-21, and says that the RPD engaged in “inverted reasoning”.

[22] It is true that the language chosen by the RPD may leave this impression: “having not believed the claimant on essential aspects of her claim, the tribunal finds no probative value in the documents produced in an attempt to corroborate her allegations”. However, when the decision is read as a whole, it becomes clear that the documents that were offered to corroborate Ms. Cortes’ claim were not rejected solely because of the adverse credibility finding.

[23] The record included written complaints filed by Ms. Cortes with the police; a declaration to the police made by her aunt; and a copy of her uncle’s complaint to the police following the murder of her cousin. None of these documents mentioned the operation of the bingo halls. The uncle’s police complaint referred to the AUC, rather than the FARC. One of the police reports was filed by Ms. Cortes 24 hours before her departure from Colombia, and mentioned no specific incidents.

[24] The RPD placed little weight on threatening notes that Ms. Cortes allegedly received from the FARC because they included her two deceased cousins in a list of individuals who were ordered to leave the area within 48 hours. The RPD held that the FARC would have known that they had already killed these two individuals, and would not have demanded that they leave the area. The RPD also observed that the FARC's threatening notes did not refer to the debt that was allegedly owed by Ms. Cortes' family.

[25] Ms. Cortes says that these conclusions appear to be speculative and not grounded in evidence. However, there were many reasons why the RPD placed little weight on the evidence submitted to corroborate her claim, and its occasional speculation is not sufficient to warrant the intervention of this Court.

[26] Finally, Ms. Cortes argues that the RPD failed to conduct a separate s 97 analysis of her claim. Relying on this Court's decision in *Bouaouni v Canada (Minister of Citizenship and Immigration)*, 2003 FC 1211 at paragraph 41, she says that a negative credibility finding, which may be determinative of a claim under s 96 of the IRPA, is not necessarily determinative of a claim under s 97.

[27] Whether the RPD was obliged to conduct a separate s 97 analysis involves questions of fact and mixed fact and law, and is generally subject to review against the standard of reasonableness (*Dawoud v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1110 at para 33 [*Dawoud*]).



[28] Negative credibility findings are sufficient to foreclose an analysis under s 97 if there is no objective evidence to support the conclusion that an applicant faces a personalized risk (*Lopez v Canada (Minister of Citizenship and Immigration)*, 2014 FC 102 at para 46; *Dawoud* at paras 44-45). Ms. Cortes was unable to establish that she had in fact been threatened by the FARC, or that she was subjected to any personal risk. I am therefore not persuaded that the RPD was required to conduct a separate s 97 analysis. This Court has held that if the evidentiary basis for both claims is the same, and if the claimant has not provided further information in relation to s 97, then there is no need to conduct a separate s 97 analysis (*Canada (Minister of Citizenship and Immigration) v Nwodi*, 2014 FC 520 at para 14, citing *Ayaichia v Canada (Minister of Citizenship and Immigration)*, 2007 FC 239 at paras 19-20).

#### VI. Conclusion

[29] For the foregoing reasons, the application for judicial review is dismissed. Neither party proposed that a question be certified for appeal.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

"Simon Fothergill"

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Judge

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

**DOCKET:** IMM-5156-15

**STYLE OF CAUSE:** LUZ NELLY OROZCO CORTES v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 26, 2016

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** JUNE 20, 2016

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