

Federal Court



Cour fédérale

Date: 20201203

Docket: IMM-4717-19

Citation: 2020 FC 1114

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 3, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**DENNYS JESUS CHACE REVERON
CRISTINA ELENA KHAN KHAN
ALEISHKA ALEIDA CHACE REVERON**

Applicants

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Dennys Jesus Chace Reveron, Cristina Elena Khan Khan, and their daughter Aleshka Aleida Chace Khan, filed an application for judicial review under

subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision rendered on May 22, 2019, by the Refugee Protection Division [RPD].

[2] For the reasons set out below, I allow this application.

II. Facts

[3] The applicants are a Venezuelan family and describe themselves as supporters of the *Mesa De La Unidad Democratica* [MUD], an electoral coalition of Venezuelan political parties formed to unify the opposition to the United Socialist Party of Venezuela of President Hugo Chávez during the 2010 Venezuelan parliamentary elections. More specifically, Chace Reveron has been allegedly affiliated with the *Comité de Organización Política Electoral Independiente* [COPEI], one of the political parties that are members of the MUD coalition, since 2010. However, he stopped taking part in COPEI meetings after moving in March 2013, following his marriage to Ms. Khan Khan in September 2012, from his hometown of Catia La Mar (municipality of Vargas) in the State of Vargas, to Guayana City (village of San Felix/Puerto Ordaz) in the State of Bolivar—a straight line distance of approximately 540 km—that is, Ms. Khan Khan's hometown.

[4] It would appear that although COPEI had been active in the municipality of Vargas, it had not been active in Guayana and, therefore, after moving to the village of San Felix/Puerto Ordaz, Mr. Chace Reveron became a supporter of MUD, which was more active in that area. As he explained at the hearing before the RPD, he did not withdraw from COPEI, but since this

group and MUD were both aligned in opposition to Chávez's government, he began to take part in activities organized by MUD, as this coalition was more active in Guayana.

[5] Since 2013, the opposition political activities of Mr. Chace Reveron and Ms. Khan Khan were limited to participating in demonstrations against the Chávez government; Mr. Chace Reveron drove other members of the opposition to protest in his truck. Although he holds a university degree in tourism, Mr. Chace Reveron worked in the transportation sector.

[6] Mr. Chace Reveron and Ms. Khan Khan say they were branded as traitors by those who were loyal to the Chávez/Maduro governments. Mr. Chace Reveron was often called a bastard and a traitor to Venezuela by Chávez/Maduro supporters when he was looking for work, or tried to access certain government services. Their neighbours, who were supporters of the Maduro government and were aware of their political affiliations, insulted them and yelled at them for being traitors to Venezuela and often dumped garbage on their property.

[7] On May 2, 2016, four armed men confronted Mr. Chace Reveron in front of his house. They beat him, called him a [TRANSLATION] "traitor" and threatened to kidnap his little girl and kill him. They ordered him to give them all his personal belongings, including his cellular telephone and wallet, and they entered his home in search of more money. They hurled insults at him and shouted that they would be doing their government a favour if they were to exterminate traitors to the revolution, such as Mr. Chace Reveron and his family.

[8] The following day, the applicants went to the police station but did not file a complaint as they identified one of the police officers at the police station as being one of the aggressors. Thereafter, the applicants received telephone calls telling them not to inform the police of the attack and to pay \$500 per month because Ms. Khan Khan worked as a stewardess and they thought they could get money; otherwise, the person on the other end of the line would kill them.

[9] On May 11, 2016, six armed men forced their way into the applicants' home. They pushed Ms. Khan Khan and her daughter. They demanded \$500 and threatened to kill the family if they did not pay up. They stole valuable objects, money and jewelry, and they beat Mr. Chace Reveron and Ms. Khan Khan before leaving; they informed the family that they would come back every month to collect the money.

[10] After the men left, the applicants took shelter overnight in a hotel. They did not go to the hospital because the hospitals in Venezuela are reportedly in poor condition and do not have the necessary equipment to help people.

[11] The following day, May 12, 2016, the applicants returned to Mr. Chace Reveron's family home in Vargas to stay with his mother. They were at the police station to file a complaint, but the police advised them to pay the individuals off as they are members of a group called the Colectivos, a local armed organization supporting the government.

[12] While it is unclear why the applicants did not simply stay in Vargas, another reason the applicants left Venezuela is the discrimination experienced by Ms. Khan Khan, who was of

Guyanese origin. It would seem that even though Ms. Khan Khan was born in Venezuela, Venezuelans of Guyanese origin are confronted with insults and bitterness from other Venezuelans owing to the nationalist tendencies of Venezuelan politics.

[13] In any case, on July 9, 2016, the applicants left Venezuela for the United States. They had had visas for the United States since 2013, when the family vacationed in Orlando, Florida.

[14] They stayed in the United States for 10 months with Khan Khan's family, and on May 5, 2017, the applicants filed a claim for refugee protection in Canada. At the port of entry, Ms. Khan Khan informed the Canadian officer at the border that they had stayed in the United States for 10 months because they thought they could claim refugee protection there, but their lawyer had informed them that he did not think they would be successful, such that they never sought asylum in the United States. She also mentioned that coming to Canada was not part of their initial plan and that, indeed, she did apply for a visa to come to Canada legally one year earlier, but that her application was refused. She stated that the family did not want to come to Canada illegally.

[15] The applicants' claim for refugee protection was based on a fear of persecution in light of their status as affiliates of MUD and Ms. Khan Khan's Guyanese roots. Although the applicants' refugee protection claim would typically be inadmissible pursuant to paragraph 101(1)(e) of the IRPA as the applicants arrived in Canada through the United States, Mr. Chace Reveron's brother was in Canada and made a claim for refugee protection that was referred to the Board. The applicants' situation therefore fell within one of the exceptions provided for in

paragraph 159.5(c) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, which stipulates that paragraph 101(1)(e) of the IRPA does not apply when a family member of the claimant is in Canada and has made a claim for refugee protection.

[16] On April 23, 2019, the applicants filed a statement to make [TRANSLATION] “clarifications, additions and corrections to [their] statement”. Specifically, they (1) corrected their statement to show that they were [TRANSLATION] “sympathizers” of the MUD party, and not [TRANSLATION] “affiliates” or members; and (2) indicated that they have been affiliates of COPEI, a, social-Christian political party, from 2010 to present. On May 1, 2019, they also sent Exhibit D-6, a document indicating that Mr. Chace Reveron was an active member of the COPEI party.

A. *Refugee Protection Division’s decision*

[17] In a decision dated May 22, 2019, the Refugee Protection Division [RPD] refused the claim for refugee protection.

[18] First, the RPD noted that there were [TRANSLATION] “significant contradictions and inconsistencies” in Mr. Chace Reveron’s testimony with respect to his support for the MUD and COPEI parties. Most notably, they did not understand his testimony with regard to the change from [TRANSLATION] “affiliate” to [TRANSLATION] “sympathizer”, or why the applicants waited until the day before the hearing to submit Exhibit D-6, which corroborated the fact that Mr. Chace Reveron was a member of COPEI. The RPD also took issue with the fact that he had not submitted a copy of his COPEI membership card.

[19] Second, the RPD was not satisfied that the applicants were targeted by the government, even though it accepted that they were credible. The RPD stated that the National Documentation Package indicated that thousands of the Venezuelans oppose the government. The RPD felt that not all of these people were at risk of being targeted by the government.

[20] Finally, the RPD dismissed the applicants' testimony concerning their choice not to seek asylum in the United States. In the RPD's opinion, that choice did not demonstrate that they feared for their life. Rather, the RPD found that the applicant's behaviour [TRANSLATION] "points to a clear desire to choose a country, which offers them all the benefits necessary to their well-being, instead of seeking protection in the country where they stayed for quite some time".

[21] The RPD's decision does not mention Khan Khan's concerns over the fact that she is of Guyanese descent.

B. Refugee Appeal Division's decision

[22] The applicants appealed the decision of the RPD, but the Refugee Appeal Division [RAD] rejected their claim under paragraph 110(2)(d) of the IRPA. This provision limits the right of appeal of certain categories of refugee protection claimants, including those who enter Canada from the United States. The applicants were therefore not entitled to an appeal, as they came to Canada from the United States.

[23] The application for leave and for judicial review included an application for an extension of time in which to do so, as the legal deadline had elapsed. The application for an extension of time was granted by this Court on December 30, 2019.

III. Issues

[24] Despite the applicants' characterization of certain issues as ones of natural justice or procedural fairness, I believe the issues are really about the assessment of the facts and evidence by the RPD. Therefore, the only issue is whether the RPD's decision was reasonable.

IV. Standard of review

[25] With respect to the issue of the applicants' credibility, the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16, 23, 25 [*Vavilov*]), and there is nothing that suggests that the legislative intent or the rule of law requires otherwise (*Vavilov* at para 17).

[26] As regards the issues of natural justice and the right to procedural fairness, the applicable standard of review is the one that is as close as possible to the correctness standard (*Perron v Canada (Attorney General)*, 2020 FC 741 (CanLII) at para 48; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121 at para 54).

V. Analysis

A. *Analysis of Ms. Khan Khan's fear based on her Guyanese roots*

[27] The applicants submit that the RPD failed to analyze Khan Khan's specific fear on the basis of her race (her Guyanese roots), an issue that was raised in her Basis of Claim Form, and that, for this reason, the RPD's decision is a breach of procedural fairness and natural justice.

[28] I agree with the applicants. The discrimination faced by Ms. Khan Khan at the hands of the Colectivos because of her Guyanese roots was highlighted in the applicants' account and mentioned by Mr. Chace Reveron and Ms. Khan Khan at the hearing before the RPD. However, at no point in its decision does the RPD indeed examine, analyze or mention this additional reason why the applicants left Venezuela.

[29] For that reason alone, I believe it is necessary to set aside the decision.

[30] While I agree that the RPD did not need to address all of the applicants' arguments (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 (CanLII), [2011] 3 SCR 708 at para 16 [*Newfoundland Nurses*]), the issue surrounding Khan Khan's ethnic heritage is a key factor, and the fact that the panel failed to meaningfully grapple with this issue may call into question whether the decision maker was actually alert and sensitive to the matter before it (*Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at para 39).

B. *Analysis of credibility*

[31] The RPD drew a negative inference from the amendment to the applicants' form, that is to say the change from [TRANSLATION] "affiliate" to [TRANSLATION] "sympathizer" of MUD and

the late filing of the letter confirming that he was rather affiliated with COPEI; the RPD found Mr. Chace Reveron's answers to be very confusing when asked to explain this change.

[32] Furthermore, the RPD criticized Mr. Chace Reveron for not having provided a membership card for COPEI. The transcript of the hearing reveals the following exchange between the panel and Chace Reveron:

[TRANSLATION]

Q. When becoming the member of a party, to the best of my knowledge, when becoming the member of a party, the party issues a card and on this card in the majority of cases, there is a number with the card. Therefore, my question is why submit a statement from the party and not your card or your party membership number?

A. I cannot tell you why. All I can say is that I asked the party for a statement.

Q. My question to that is, have you ever had a membership card?

A. No, I never had a card. It's an old group.

[Emphasis added.]

[33] In its decision, the RPD concluded as follows:

[TRANSLATION]

This confusing and inconsistent evidence gives the panel strong doubts as to its truthfulness. Furthermore, the late filing of Exhibit D-6 did nothing to help the applicant's credibility. The applicant's explanations as to his failure to submit his membership card for COPEI and especially his ignorance and his lack of efforts to obtain it are unreasonable and therefore rejected.

[Emphasis added.]

[34] However, there is nothing in the evidence to establish that Mr. Chace Reveron is in possession of such a card or that COPEI issues cards to its members. The panel seems to have imposed a false premise on Mr. Chace Reveron and asked him to prove it.

[35] Moreover, the question of whether Mr. Chace Reveron was affiliated with MUD or simply a sympathizer was too technical a distinction on which the RPD unduly focused its attention. Mr. Chace Reveron stated that he was affiliated with COPEI, a political party that was active in his region, until he married and moved to another part of Venezuela. As COPEI was not active in that other part of the country, he began to support the coalition of opposition groups formed by MUD. This is quite reasonable. What is important, however, is not the nomenclature used to qualify his involvement, but the extent of his involvement and whether his profile would put him at risk of persecution.

[36] I therefore find that the RPD's conclusion that Mr. Chace Reveron's testimony as to whether he was an affiliate or sympathizer of MUD [TRANSLATION] "gives the panel strong doubts as to its truthfulness" was not reasonable (*Cooper v Canada (Citizenship and Immigration)*, 2012 FC118).

[37] It seems to me that these credibility findings were possibly determinative with respect to the other elements of the RPD's decision. Therefore, for this reason as well, I find that the RPD's decision must be set aside.

VI. **Conclusion**

[38] In my view, the RPD's decision was not reasonable for the reasons stated above, and this application must be allowed.

JUDGMENT in IMM-4717-19

THIS COURT’S JUDGMENT is as follows:

1. The application for judicial review is allowed.
2. The impugned decision is set aside, and the matter is referred back to a differently constituted panel of the Refugee Protection Division [RPD] for redetermination.
3. No question is certified.

“Peter G. Pamel”

Justice

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4717-19

STYLE OF CAUSE: DENNYS JESUS CHACE REVERON, CRISTINA
ELENA KHAN KHAN, ALEISHKA ALEIDA
CHACE REVERON v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MATTER HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

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JUDGMENT AND REASONS: PAMEL J.

DATED: DECEMBER 3, 2020

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