Federal Court Cour fédérale

Date: 20210609

Docket: IMM-6064-20

Citation: 2021 FC 578

Ottawa, Ontario, June 9, 2021

PRESENT: The Honourable Mr. Justice Brown

BETWEEN:

CARMEN ICELA CENTENO ARTEAGA
STIVEN YUNIEL VELASQUEZ CENTENO

Applicants

and

MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Nature of the matter

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board. The RPD, on October 2, 2020, concluded the Applicants were neither Convention refugees nor persons in need of protection [Decision].

II. Facts

[2] The Applicants, the Principal Applicant and the Dependent Applicant, are citizens of Honduras. The Principal Applicant previously worked as a courier who travelled regularly between Honduras and the United States.

[3] The Applicant was in a common law relationship with her former partner [Former Partner] between 2012 and 2015 and has one child with him. The child is not part of this Application for Judicial Review.

[4] In 2018, the Former Partner began a relationship with a new woman. In February 2019, he was with her and others in the United States when the Former Partner killed the new woman while under the influence of drugs. The other people in the home called the police, and the Former Partner was shot and killed by police.

[5] In February 2019, the Principal Applicant learned of a Facebook post calling her a "witch" and blaming her for the two deaths. The Principal Applicant believes these posts were made by a friend of the Former Partner [Friend].

[6] The Principal Applicant became fearful because accusations spread and people in her hometown started blaming her. The Former Partner's brother [Ever] was overheard by the Principal Applicant's aunt [Aunt] saying that the Applicant and her son "had to die the way his

brother [the Former Partner] and [his girlfriend] had died". The Principal Applicant says she also received other threatening calls and messages.

III. Decision under review

[7] The RPD found there was insufficient evidence to support a specific risk under section 97 of *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*]. The RPD had found there was no nexus to a Convention ground pursuant to section 96 of *IRPA* so assessed the claim solely under section 97 of *IRPA*.

[8] The RPD accepted the Principal Applicant was subject to a Facebook post calling her a witch, but determined it was speculative to think the Friend was responsible for making the Facebook post under a false name. The RPD also said the Principal Applicant had not provided any "additional evidence" that the Friend or Ever wished to harm her.

[9] The RPD acknowledged the potential for general risks flowing from the extremely high level of violence in Honduras and the largely absent functioning of effective state protection mechanisms, but concluded "absent any clear and credible evidence that anyone is actually motivated to harm the claimants in Honduras, I am unable to conclude on a balance of probabilities that there is a risk to the claimants lives, a risk of cruel and unusual treatment or punishment or a danger of torture for the claimants in Honduras."

IV. Issues

[10] The only issue in this application is whether the Decision is reasonable.

V. Standard of Review

[11] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67 [*Canada Post*] Justice Rowe said that *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] set out a revised framework for determining the applicable standard of review for administrative decisions. The starting point is a presumption that a standard of reasonableness applies. This presumption may be rebutted in certain situations, none of which apply in this case. Therefore, the Decision is reviewable on a standard of reasonableness.

[12] In *Canada Post*, Justice Rowe explains what is required for a reasonable decision, and what is required of a court reviewing on the reasonableness standard:

> [31] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov*, at para. 85). Accordingly, when conducting reasonableness review "[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with 'respectful attention' and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion" (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand "the basis on which a decision was made" (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).
>
> [32] A reviewing court should consider whether the decision as a whole is reasonable: "what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual

> context of the particular decision under review" (*Vavilov*, at para. 90). The reviewing court must ask "whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov*, at para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).
>
> [33] Under reasonableness review, "[t]he burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov*, at para. 100). The challenging party must satisfy the court "that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable" (*Vavilov*, at para. 100).

[13] The Supreme Court of Canada in *Vavilov*, at para 86 states "it is not enough for the outcome of a decision to be justifiable. Where reasons for a decision are required, the decision must also be justified, by way of those reasons, by the decision maker to those to whom the decision applies." The reviewing court must be satisfied the decision maker's reasoning "adds up":

> [104] Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
>
> [105] In addition to the need for internally coherent reasoning, a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision: *Dunsmuir*, at para. 47; *Catalyst*, at para. 13; *Nor-Man Regional Health Authority*, at para. 6. Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers.

[14] Furthermore, *Vavilov* makes it clear that the role of this Court is not to reweigh and reassess the evidence unless there are “exceptional circumstances”:

> [125] It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.
>
> [Emphasis added]

VI. Analysis

[15] The Applicants submit the RPD erred by finding insufficient evidence of risk. They submit the RPD made numerous errors including unreasonably discounting corroborative evidence, mischaracterizing the Principal Applicant’s testimony, making veiled credibility findings, and ignoring credible and probative evidence.

A. *Assessment of evidence regarding threat from Ever*

[16] The evidence provided by the Principal Applicant was a statement from her Aunt who overheard a conversation between Ever and someone else in which Ever threatened the Principal Applicant and her child. The Principal Applicant also gave her own testimony of her

conversation with her Aunt. The words used by the Aunt were that the Principal Applicant and her son "had to die the way his brother [the Former Partner] and [his girlfriend] had died."

[17] The RPD said this evidence was vague and lacking in detail. The RPD said the Principal Applicant was "unable to articulate precisely when the conversation occurred, when the threats were made, or how [the Aunt] had acquired the information". Therefore, the RPD determined "there is also insufficient evidence to establish on a balance of probabilities that Ever wishes to harm the claimants."

[18] The Applicants submit the RPD erred in disregarding the Aunt's statements, which corroborate a key aspect of the narrative. The RPD did not question the authenticity of the statement and did not articulate an assessment of the credibility, probative value or weight of the statement allegedly contrary to *Nti v Canada (Citizenship and Immigration)*, 2020 FC 595 [*Nti*] [McHaffie J]:

> [19] Justice Grammond of this Court helpfully reviewed these concepts and their interplay in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14. Given the completeness of that discussion, it need not be repeated here. By way of summary, Justice Grammond describes the weight of evidence as being a function of its credibility (its trustworthiness) and its probative value (its capacity to establish the fact in issue): *Magonza* at paras 16–31. He suggests that "a decision-maker cannot reach a conclusion regarding weight without having previously assessed credibility or probative value or both" *Magonza* at para 29. Having assessed the weight to be given to evidence on this basis, the trier of factassesses whether the evidence collectively is sufficient to meet the applicable burden: *Magonza* at paras 32–35.
>
> …
>
> [21] In other words, evidence that has little probative value may be entitled to little weight even assuming it to be credible, which may

> obviate the need to undertake the credibility assessment: *Ferguson* at paras 26–27; *Zdraviak v Canada (Citizenship and Immigration)*, 2017 FC 305 at para 18. I certainly do not take Justice Grammond's statement in *Magonza* to mean that a decision-maker must assess credibility even if that assessment is irrelevant to the ultimate determination of weight: *Magonza* at paras 29–31. Nor do I take Justice Zinn's statement in *Ferguson* to mean that a decision-maker may jump to an assessment of weight without assessing credibility in cases where the evidence is probative on its face. The answer to the credibility question is not "irrelevant" in such cases: *Ferguson* at para 26.

[19] The Applicants submit the RPD gave the evidence regarding Ever, which was probative on its face, little weight without a negative credibility assessment.

[20] The Applicants also submit the RPD unreasonably discounted the Principal Applicant's testimony about her conversation with her Aunt by mischaracterizing her testimony. The Applicants submit the Principal Applicant generally provided the answers to the questions asked and the RPD did not press for additional details. They submit the RPD did not make negative credibility findings or any clear findings regarding the incident so it is not evident whether the RPD doubted Ever threatened the Principal Applicant or whether the RPD accepted the threat but found it insufficient to establish the Principal Applicant faced a risk of harm.

[21] The Applicants submit Immigration and Refugee Board members must make negative credibility findings in clear and unequivocal terms (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228, at para 6). They submit this Court has cautioned against disguising an unexplained or veiled credibility finding as a finding of insufficiency (*Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 [*Magonza*] [Grammond J] at para 35).

[22] The Applicants submit that if the RPD doubted the credibility of the Principal Applicant's testimony, it was in error because such a finding is not supported by the record. In *Caicedo v Canada (Citizenship and Immigration)*, 2011 FC 749 [*Caicedo*] [Rennie J, as he then was] at para 28 held it was unreasonable for the member to "predicate a finding of credibility on the basis that the applicant provided 'scant detail' when the questions themselves did not prompt or demand details or greater elaboration than the witness provided."

[23] I am unable to accept these submissions as leading to judicial review in this case. In my respectful view, the RPD gave several reasons to find the Aunt's evidence was insufficient. The Aunt's statement did not provide the time, date, place or context of the threat. In addition, this evidence was unsworn. The RPD also found the Principal Applicant's testimony vague, and neither the Principal Applicant nor the Aunt provided a basis for their belief that Ever was dangerous. In my view these findings were reasonably open to the RPD on the record.

[24] In addition, the Applicant in effect asks the Court to both reweigh and reassess the evidence in this case. With respect, the Supreme Court of Canada has made it very clear this is not something reviewing courts should do except in exceptional circumstances. I was not pointed to any exceptional circumstances.

[25] Moreover, I note jurisprudence also directs this Court to give deference to RPD findings of sufficiency of evidence: see *Magonza*, a case relied on by both parties. On sufficiency, the Court in *Magonza* explains that when evidence is indirect or circumstantial, a decision-maker may require several pieces of evidence to prove the fact for which it is tendered. The fact-finder

must "rely on inferences, weigh each piece of evidence and decide whether the cumulative weight of all the evidence is sufficient to warrant a finding that the disputed fact exists". A decision-maker may find that evidence that stands alone may not be sufficient to convince them of the fact, such that corroboration would be needed. *Magonza* states:

> [32] The last concept I wish to discuss is that of "sufficiency" of the evidence. The use of this concept, especially if it is meant to require several pieces of evidence to prove a fact, may be surprising. After all, the law does not require that facts be proved by more than one witness. When a contract is filed in evidence, or a witness testified that he saw the accused discharge a firearm on the victim, those facts are proven. But these are cases of direct evidence. Where the evidence is indirect or circumstantial, however, the fact-finder must rely on inferences, weigh each piece of evidence and decide whether the cumulative weight of all the evidence is sufficient to warrant a finding that the disputed fact exists.
>
> [33] Another manner of conveying the concept of sufficiency is to require corroboration: evidence that stands alone may not be sufficient. Of course, there is no accepted manner of quantifying credibility, probative value and weight. Thus, it is impossible to describe in advance what "amount" of evidence is "sufficient." "Sufficiency" is simply a word used by decision-makers to say that they are not convinced.
>
> [34] In refugee law, the central fact that must be proven is that there is "more than a mere possibility of persecution" (Chan v Canada (Minister of Employment and Immigration), 1995 CanLII 71 (SCC), [1995] 3 SCR 593 at para 120, citing Adjei v Canada (Minister of Employment and Immigration), 1989 CanLII 5184 (FCA), [1989] 2 FC 680 (CA)). Usually, this can only be proved by indirect evidence and it is impossible to say in advance "how much." Deciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis.
>
> [35] Because it is difficult to describe in words or in numbers the amount of evidence that will be sufficient to buttress a claim, sufficiency is an issue that will attract much deference on the part of reviewing courts (Perampalam at para 31). But like other factual findings, findings of insufficiency must be explained. One problem that often arises is that an "insufficient evidence" conclusion is really a manner of disguising an unexplained (or "veiled") credibility finding (Liban v Canada (Citizenship and Immigration),

> 2008 FC 1252 at para 14; Begashaw v Canada (Citizenship and Immigration), 2009 FC 1167 at paras 20–21; Adetunji v Canada (Citizenship and Immigration), 2011 FC 869 at para 11; Abusaninah v Canada (Citizenship and Immigration), 2015 FC 234 at para 54 [Abusaninah]; Majali v Canada (Citizenship and Immigration), 2017 FC 275 [Majali]; Ahmed at para 38). Decision-makers should not "move the goalposts," as it were, when they have mere suspicions about credibility that they are unable to explain.

[26] In my view, not only was it open to the RPD to find the Aunt's evidence was not sufficient to establish risk of harm because of its lack of detail and insufficient explanation, but in addition and to the contrary, the jurisprudence instructs me to give such fact findings by the tribunal "great deference" on this judicial review. This is because assessing and weighing the evidence, making findings of fact and determinations of credibility fall within the "heartland of the expertise of the RPD": *Edmond v Canada (Citizenship and Immigration)*, 2017 FC 644 [Roy J] at para 20 and following:

> [20] The assessment of credibility is based on life experience. There is no denying that the RPD has a special expertise in assessing the cases that present themselves before it. In their treatise, *The Law of Evidence*, 7th ed (Toronto: Irwin law, 2015), the authors David Paciocco and Lee Stuesser state:
>
>> In general, the trier of fact is entitled simply to apply common sense and human experience in determining whether evidence is credible and in deciding what use, if any, to make of it in coming to its finding of fact.
>
> [21] Recently, Justice Tremblay-Lamer made a similar observation in *Haramicheal v Canada (Citizenship and Immigration)*, 2016 FC 1197:
>
>> [15] The principles governing the assessment of an applicant's credibility in the refugee context are well-established within this Court. The RAD is entitled to make findings of credibility based on

> implausibility, common sense and rationality (*Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116). Adverse credibility findings should however not be based on a microscopic evaluation of issues peripheral or irrelevant to the case (*Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444).

In effect, the RPD has to consider the entirety of the evidence. However, where most of the evidence comes from one deponent, if that witness is not believed, it is obviously probable that an applicant will not satisfy her burden to convince that she is a refugee or a person in need of protection. The burden is not insignificant as she must show, on a balance of probabilities, that the decision maker has made findings on credibility that are unreasonable.

[22] Very helpfully, Justice Henry Brown provided a summary of authorities on the assessment of credibility in *Gong v Canada (Citizenship and Immigration)*, 2017 FC 165:

> [9] Additional authorities on the assessment of credibility and plausibility are summarized as follows. First, the RPD has broad discretion to prefer certain evidence over other evidence and to determine the weight to be assigned to the evidence it accepts: *Medarovik v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 61 at para 16, Tremblay-Lamer, J; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 867 at para 68, Blais J. Second, the Federal Court of Appeal confirms that findings of fact and determinations of credibility fall within the heartland of the expertise of the RPD: *Giron v Canada (Minister of Employment and Immigration)* (1992), 143 NR 238 (FCA) [*Giron*]. Third, the RPD is recognized to have expertise in assessing refugee claims and is authorized by statute to apply its specialized knowledge: *Chen v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 805 at para 10, O'Reilly, J; and see *Siad v Canada (Secretary of State)*, 1996 CanLII 4099 (FCA), [1997] 1 FC 608 at para 24 (FCA), where the Federal Court of Appeal said that the RPD, "… is uniquely situated to assess the credibility of a refugee claimant; credibility determinations, which

> lie within "the heartland of the discretion of triers of fact", are entitled to considerable deference upon judicial review and cannot be overturned unless they are perverse, capricious or made without regard to the evidence. Third, it is well-established that the RPD may make credibility findings based on implausibility, common sense and rationality, although adverse credibility findings "should not be based on a microscopic evaluation of issues peripheral or irrelevant to the case": *Haramichael v Canada (Minister of Citizenship and Immigration),* 2016 FC 1197 at para 15, Tremblay-Lamer J, citing *Lubana v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 116 at paras 10-11, Martineau J [*Lubana*]; *Attakora v Canada (Minister of Employment and Immigration)*, [1989] FCJ No 444 (FCA). Fourth, the RPD may reject uncontradicted evidence if it "is not consistent with the probabilities affecting the case as a whole, or where inconsistencies are found in the evidence": *Lubana*, above at para 10. Fifth, the RPD is entitled to conclude that an applicant is not credible "because of implausibilities in his or her evidence as long as its inferences are not unreasonable and its reasons are set out in 'clear and unmistakable terms'": *Lubana*, above at para 9.
>
> [Emphasis added]

[27] A decision-maker may find evidence that lacks detail to be insufficient, as was the case here. In *Nti*, which applies the *Magonza* concepts and formula, and on which the Applicants rely, the Court cites with approval *Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] [Kane J], in relation to the concept of sufficiency. In *Sallai*, this Court explained:

> [56] The onus rests on a claimant to support their claim with sufficient evidence and to put their best foot forward. A failure to provide details or corroborating materials can be a basis for finding that evidence is insufficient (*Ferguson* at para 27; *Haji v Canada (Citizenship and Immigration)*, 2018 FC 474 at para 20, 292 ACWS (3d) 619). Insufficient evidence is a valid reason to reject a claim.

[28] It was also appropriate for the RPD to distinguish between facts and opinions provided by third parties. The RPD questioned the Principal Applicant regarding forward facing risk, but she did not provide any answers other than the letter. In addition, an unsworn statement may attract less weight that a sworn or attested document, although I note the wide latitude to the RPD in subsection 170(g) of *IRPA* which states the RPD "is not bound by any legal or technical rules of evidence."

B. *Assessment of evidence regarding threat from friends and family*

[29] The Applicants submit there was indirect evidence that supports a reasonable inference that family and friends of the deceased sought revenge against the Principal Applicant. They submit the RPD erred in assessing this evidence, leading to its conclusion there was insufficient evidence of risk to the Principal Applicant.

[30] I repeat my concerns with venturing down this path given the longstanding jurisprudence re-affirmed in *Vavilov* to the effect that the Court should not become involved in the reassessment and reweighing of evidence, in the absence of exceptional circumstances. I set this out in some detail at the outset of this analysis. I was not pointed to any exceptional circumstances.

[31] The Applicants allege a Facebook post provides indirect evidence of risk because it is implicitly threatening and provided the area in which the Principal Applicant lived. However, the RPD appeared to assign little weight to the Facebook post on the grounds there was insufficient evidence the Friend was the author of the Facebook post.

[32] As the Respondent submits, the Applicants rely on the Facebook post, which the Principal Applicant believes, was written by the Friend using a fake name. The Principal Applicant said she believed it was the Friend because of other comments made blaming the Principal Applicant for the deaths. However, in my view the RPD reasonably found the Facebook posts did not make any direct threats towards her. It is also established that a decision maker is not required to specifically mention and assess all the evidence before it.

VII. Conclusion

[33] In my respectful view, the Applicants have not established, and the onus being on them, that the Decision of the RPD is unreasonable. The RPD reviewed the evidence on the record and in my view reasonably found there was insufficient evidence to show a risk to the Applicants in Honduras. I have given these sufficiency findings due deference given the jurisprudences cited above. In my view, the Decision is transparent, intelligible and justified based on the facts and law as required by *Vavilov*. It adds up and accords with constraining jurisprudence. Therefore, this application must be dismissed.

VIII. Certified Question

[34] Neither party proposed a question of general importance, and none arises.

JUDGMENT in IMM-6064-20

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"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6064-20
STYLE OF CAUSE:	CARMEN ICELA CENTENO ARTEAGA AND STIVEN YUNIEL VELASQUEZ CENTENO v MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE BETWEEN VANCOUVER, BRITISH COLUMBIA AND OTTAWA, ONTARIO
DATE OF HEARING:	MAY 31, 2021
JUDGMENT AND REASONS:	BROWN J.
DATED:	JUNE 9, 2021

APPEARANCES:

Juliana Dalley	FOR THE APPLICANTS
Francois Paradis	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Barrister and Solicitor Immigration & Refugee Legal Clinic	FOR THE APPLICANTS
Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT