

Federal Court



Cour fédérale

Date: 20210910

Docket: IMM-4100-20

Citation: 2021 FC 937

Ottawa, Ontario, September 10, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

JENIFFER CORREA RODRIGUEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Background

[1] The Applicant is a citizen of Columbia. She entered Canada in October 2017 and sought refugee protection four (4) months later. She claims that as a child, she and her family were displaced by the internal conflicts in Columbia. Her eldest brother disappeared in 1999 and her orphaned cousin, who was raised by her parents, was killed in 2004. In 2006, she was sexually assaulted by members of the Fuerzas Armadas Revolucionarias de Colombia [FARC]. Wanting

to improve her prospects in life, she went to live with her brother and sister-in-law in 2008. In 2011, her sister-in-law, who worked as a financial analyst at a bank, became the target of extortion by the FARC. As a result, the Applicant, her brother and sister-in-law were forced to change residences several times. The Applicant only became aware of the extortion in December 2014, when her brother advised her that the extortionists had made specific references to her and to the fact that they knew her place of employment, her schedule and her friends. In 2015, she became romantically involved with a Chilean man, moved to Chile and married him. The marriage fell apart due to domestic violence and she returned to Colombia to live with her brother and sister-in law. A few days after her return, on July 22, 2017, while returning to her brother's home by taxi after a night out, three (3) men intercepted the vehicle and assaulted both the taxi driver and her. Prior to losing consciousness, she recalls one of the assailants saying that this was a "settling of accounts", the same terms previously used by the extortionists. She fled back to Chile for several months before coming to Canada on a tourist visa.

[2] On April 11, 2019, the Refugee Protection Division [RPD] dismissed the Applicant's claim. It found that her credibility was impugned by :

- a) her inability to testify consistently about her addresses of residence;
- b) the contrary evidence regarding the date of a move in 2014;
- c) the inconsistencies as to when she found out about the extortion;
- d) the absence of any mention of the FARC as the extortionists in her Basis of Claim form;
- e) her decision to return to her brother's residence in July 2017; and

- f) the fact that her brother and sister-in-law continue to respectively run a business and work at a bank in Columbia.

[3] The Applicant appealed the RPD's decision to the Refugee Appeal Division [RAD]. On June 18, 2020, approximately one (1) year after submitting her evidence and submissions in support of the appeal, the RAD asked for additional submissions on the possibility of an internal flight alternative [IFA] for the Applicant. On July 17, 2020, the Applicant sent further submissions to the RAD as requested and included new items of documentary evidence for consideration regarding the issue of the proposed IFA.

[4] On August 14, 2020, the RAD dismissed the Applicant's appeal and confirmed the RPD's decision that the Applicant was neither a Convention refugee nor a person in need of protection. The RAD found the determinative issue to be credibility. Although it found that the RPD had erred in some findings, it concluded that those errors were not determinative. The RAD found that the Applicant was not credible on central elements of her claim, including the existence of a prospective fear or risk.

[5] The Applicant seeks judicial review of the RAD's decision. She argues that the RAD breached its duty of procedural fairness by failing to address in its reasons the issue of a viable IFA in Colombia. The Applicant also contends that the RAD's assessment of her credibility is unreasonable in two (2) respects. The RAD failed to consider, in accordance with the *Chairperson's Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* [Guideline], how the Applicant's gender and her history as a victim of gender-based violence

[GBV] may have affected her recollection of events, including the specifics of her various changes of residence. The RAD also made speculative findings with regard to the incident of July 22, 2017.

II. Analysis

[6] The RAD's credibility findings are reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35). The Court's focus is on "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" (*Vavilov* at para 83). It must ask itself "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). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[7] When reviewing issues of procedural fairness, the role of this Court is to determine whether the proceedings were fair in all the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35).

A. *No Breach of Procedural Fairness*

[8] The Applicant submits that by inviting her to make further submissions on the existence of a viable IFA, the RAD created a legitimate expectation that the issue was of significance and that any additional representations or evidence tendered by the Applicant in response would be duly considered by the RAD. The Applicant argues that the RAD's failure to address the issue in its reasons or to refer to the Applicant's additional submissions and supporting evidence constitutes a breach of procedural fairness.

[9] The Applicant has failed to persuade me of the merit of her argument.

[10] Given the RAD's conclusion that the Applicant was not credible regarding central elements of her claim, including the existence of a prospective risk, there was no reason for the RAD to consider the issue of the IFA. The RAD was simply giving the Applicant notice that it might consider a new issue in the determination of the appeal since the RPD had not raised the issue of a viable IFA with the Applicant. If the RAD had found the Applicant credible, it would not have been able to consider the availability of an IFA without notice to the Applicant. The RAD likely did not mention the issue in its decision because it was not raised in the RPD's decision and it was irrelevant to the grounds of appeal raised by the Applicant.

[11] Moreover, the Applicant has not articulated how the result of the appeal could have been different had the RAD addressed the IFA issue in its decision, or how her interests were

prejudiced by the RAD's handling of this issue. It is unclear how a determination on the availability of an IFA could undermine the RAD's negative credibility findings.

[12] As to the Applicant's argument that the RAD erred in saying that the Applicant "did not submit any new evidence" when she in fact had submitted four (4) new elements with her submissions relating to the availability of an IFA, the Applicant takes the RAD's sentence out of context. The RAD specified that the Applicant "did not submit any new evidence with her memorandum of Appeal". This is correct. Since the RAD decided not to consider the issue of the IFA, there was no need to mention the evidence adduced by the Applicant in support of her arguments concerning the IFA.

B. *Reasonable Assessment of Credibility*

[13] In her memorandum seeking leave to the Court, the Applicant did not raise any argument regarding the RAD's assessment of her credibility. It is a well-established principle that the Court will not deal with arguments raised for a first time in a further memorandum of law. However, the Court may consider new issues where, for example, they are supported by the evidentiary record, the respondent would not be prejudiced and no undue delay would result (*Al Mansuri v Canada (Public Safety and Emergency Preparedness)*, 2007 FC 22 at paras 12-13; see also *AB v Canada (Citizenship and Immigration)*, 2020 FC 19 at paras 72, 74; *Lakatos v Canada (Citizenship and Immigration)*, 2019 FC 864 at paras 25-29). Since the Respondent has not strongly objected to the Applicant raising a new argument and has in fact responded to it, I have decided to exercise my discretion to consider the merit of the Applicant's argument.

[14] Upon review of the decision, I am satisfied that the RAD considered the Applicant's explanation for her admitted difficulties in accurately recalling events, such as the specifics of her various changes of residence. The RAD specifically considered her argument that the RPD did not fully appreciate her history of persecution in Colombia, including the fact that her family was directly targeted and threatened by the guerillas since she was a child and that she was a victim of sexual assault and domestic violence. The RAD found that, while deeply regrettable that the Applicant was scarred by these events, she did not provide any medical evidence to demonstrate that her ability to testify was compromised by her traumatic past, nor did she petition the RPD or the RAD to be designated as a vulnerable person. The RAD also noted that the Applicant's testimony regarding emotionally challenging issues was quite coherent. The Applicant has not persuaded me that the RAD unreasonably discounted her history as a victim of GBV or failed to consider the Guideline in its assessment of her credibility.

[15] On the issue of whether the RAD made speculative findings regarding the July 22, 2017 incident that would render the decision unreasonable, the RAD found that there was insufficient evidence to suggest that the attack of the Applicant was in any way related to the FARC, any other paramilitary group or earlier extortion attempts. The Applicant argues that the RAD's speculative finding that the taxi driver was the original target of the assault is "a breathtaking example of a wholly unfounded inference without any basis in the record of the proceedings before the RPD".

[16] In my view, the Applicant is mischaracterizing the RAD's finding regarding this incident. After noting the Applicant's testimony, the RAD found that it was highly unlikely that the

Applicant could have been recognized in the dark as a passenger in a taxi more than two (2) years after she had left Colombia by people who never met her face to face. The RAD also found that it was also unlikely that her assailants would attack her in such a time and fashion since they knew where she worked, including her schedule and risk that the taxi driver might defend her or be a witness to the attack. In that context, the RAD suggested that the more likely scenario was, “by way of example”, that the taxi driver was the original target of the assailants who recognized the lit licence plate of the car. The RAD indicated that while it could not be certain that the taxi driver was the target, it was far more likely in the circumstances than the contention that the assailants were FARC members settling accounts with the Applicant because her sister-in-law had failed to pay them after 2011. The RAD was clear that its finding on this point was not a certainty but a possible explanation for what the Applicant had articulated.

[17] To conclude, I am satisfied that, when read holistically and contextually, the RAD’s decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible.

[18] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4100-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed; and
2. No question of general importance is certified.

“Sylvie E. Roussel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4100-20

STYLE OF CAUSE: JENIFFER CORREA RODRIGUEZ v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: AUGUST 30, 2021

JUDGMENT AND REASONS: ROUSSEL J.

DATED: SEPTEMBER 10, 2021

APPEARANCES:

Michael Brodzky FOR THE APPLICANT

Michael Butterfield FOR THE RESPONDENT

SOLICITORS OF RECORD:

Mr. Michael Brodzky FOR THE APPLICANT
Barrister & Solicitor
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario