

Federal Court



Cour fédérale

Date: 20211129

Docket: IMM-1948-20

Citation: 2021 FC 1318

Ottawa, Ontario, November 29, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

JAIRO ARTURO VILLARRAGA RIOS

Applicant

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Jairo Arturo Villarraga Rios, is a citizen of Colombia. He brings this Application for Leave and for Judicial Review of the Refugee Appeal Division's [RAD] February 24, 2020 decision dismissing his appeal and confirming the decision of the Refugee Protection Division finding him to be neither a Convention refugee nor a person in need of

protection. The Applicant submits the RAD's credibility findings are unreasonable, as was its treatment of the evidence.

[2] In undertaking an independent consideration of the evidence, the RAD addressed the arguments raised by the Applicant on the appeal. The RAD concluded that he had failed to establish with reliable and trustworthy evidence a well-founded fear of persecution or that he was a person in need of protection. The issues raised on this Application invite the Court to reweigh the evidence but they do not establish any error justifying the Court's intervention. For the reasons that follow, the Application is dismissed.

II. Background

A. *Separate claims*

[3] The Applicant entered Canada irregularly in August 2018 and commenced a claim for refugee protection.

[4] His wife and children, also citizens of Colombia, entered Canada from the United States on September 8, 2018, at a regular land port of entry. They too initiated claims for protection, relying on the Applicant's narrative.

[5] The claims were heard jointly by the Refugee Protection Division [RPD] and rejected, credibility being the determinative issue.

[6] The RPD's decision was appealed, and the RAD disposed of the appeal in two separate decisions. The RAD first found that it lacked jurisdiction to consider the appeal as it related to the Applicant's wife and two children as their circumstances brought them within the scope of the provisions of the *Canada – U.S Safe Third Country Agreement* and paragraph 110(2)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Their recourse from the RPD decision was judicial review of that decision. The Applicant's wife and two children did file an Application for Leave and for Judicial Review of the RPD decision: Court docket IMM-2292-20.

[7] This Application and the Application in IMM-2292-20 were heard consecutively.

B. *Basis of Claim*

[8] The Applicant reports that he fears persecution in Colombia based on political opinion and membership in a particular social group. He reports that he was an active supporter of Gustavo Petro for president and Senator Oscar de Jesus Hurtado in recent elections in Colombia and he is also involved with labour unions, specifically the Central Union of Workers and the Union of Avianca Airlines (his former employer).

[9] The Applicant alleges that on May 21, 2018, while travelling in an SUV for the purpose of campaign work in the Medellín area of Colombia, shots were fired at the SUV as it travelled through a wooded area. He reports a series of further threatening messages and attempts to locate him between May 2018 and August 2018. One caller reportedly made reference to the May 2018 SUV attack. The Applicant also states he sought protection from the National Protection Unit,

which provided him with a bulletproof vest and a contact number. The Applicant also reported the threatening calls to the police and the public prosecutor's office but neither responded.

[10] The Applicant and his family decided that remaining in Colombia would expose them to unnecessary risk and they travelled to the United States. They did not claim protection in the United States because of reports that South American refugee claimant families were being separated in the United States and children mistreated. Instead, the family chose to seek refugee protection in Canada.

III. Decision under Review

[11] In dismissing the appeal and upholding the RPD's conclusion, the RAD cited (1) an overall lack of credibility; and (2) the absence of a reasonable explanation for the lack of effort to secure relevant corroborative documentary evidence as required by Rule 11 of the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules].

[12] As did the RPD, the RAD found the original Basis of Claim [BOC] narrative was confusing and unclear, the amended BOC narrative revealed discrepancies, and further inconsistencies arose during the oral hearing. The RAD stated that these divergences were significant and undermined the presumption of truthfulness in respect of the Applicant's testimony.

IV. Issues and Standard of Review

[13] The Applicant submits the Application raises five issues. The Respondent identifies a single issue – is the Court’s intervention warranted?

[14] The Respondent argues that a number of the issues identified by the Applicant arise from the RPD decision and were not before the RAD. The Respondent submits, and counsel for the Applicant acknowledged in the course of oral submissions, that these issues are not properly before the Court on judicial review of the RAD decision – many are addressed in IMM-2292-20. I have therefore framed the issues as follows:

- A. Did the RAD err in its credibility finding?
- B. Did the RPD err in its treatment of the documentary evidence?

[15] These issues are to be reviewed against the presumptive standard of reasonableness. A reasonable decision is one that is justified, transparent and intelligible, and is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 16 and 85 [*Vavilov*]).

V. Analysis

A. *The RAD did not err in its credibility analysis*

[16] The Applicant acknowledges inconsistencies in the evidence but argues the RAD unreasonably overemphasized the inconsistencies and submits they were not sufficiently serious to merit the RAD's adverse credibility findings. He argues the RAD exaggerated the extent to which the testimony, the original BOC narrative and the revised BOC differed and microscopically scrutinized those differences. He further submits that the inconsistencies were reasonably explained and as such were not sufficient to rebut the presumption of truthfulness.

[17] The Applicant's characterization of the many inconsistencies in the evidence as being minor or elaborative is simply not accurate. For example, the reported attack on the SUV was an important event in the series of reported events supporting his claim, but the circumstances surrounding this attack evolved and the evidence was inconsistent. Other key events, including reported efforts by the agents of persecution to locate the Applicant and his family, were either mischaracterized or omitted from the original narrative. Efforts to seek state protection and a move by the family to Cartagena, where they resided for roughly a month just prior to departing Colombia, were also omitted from the original BOC narrative.

[18] The Applicant did provide an explanation for each of the inconsistencies and omissions identified, citing fatigue on arrival in Canada, his understanding that the original BOC could be amended, and translation errors.

[19] The RAD did not disregard these explanations but agreed with the RPD's conclusion that they did not reasonably explain the inconsistencies or the omission of important details in relation to events that were significant to the claim. Nor did they explain the confused nature of the written narrative in light of the Applicant's profile as a literate and well educated individual. The RAD's adoption of the RPD's conclusions was not unreasonable and the decision details the reasoning underpinning the RAD's conclusions.

[20] Having found the evidence to be inconsistent, the inconsistencies to be material and the explanations provided unreasonable, I find no fault with the RAD's finding that the claim demonstrated an overall lack of credibility rebutting the presumption of truthfulness (*Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 22).

B. *The RAD's treatment of the documentary evidence was reasonable*

[21] The Applicant argues that the RAD unreasonably discounted his explanation for not providing original documentation from the presidential campaign to corroborate his claim that he was politically active in Colombia, that he had sought state protection and that he was active in the labour movement.

[22] The Applicant mischaracterizes both the RPD's and the RAD's primary concern as it related to the documentary evidence. The concern as expressed by both the RPD and the RAD was not the absence of authenticated documentation corroborating the various elements of the Applicant's claim - active involvement in the labour movement, active involvement in political activity and efforts to obtain state protection in response to threats and attacks – the concern was

the absence of evidence indicating reasonable efforts had been made to obtain this documentation. The Applicant's explanation for why original corroborating documentation or evidence was not available (it was in government archives or individuals were not accessible for security reasons) was not ignored, but it did not address the absence of evidence indicating efforts had been made to overcome these obstacles.

[23] In the absence of such evidence, the RAD did not err in finding the evidence fell below the standard expected by Rule 11 of the RPD Rules – a claimant must provide acceptable documents establishing elements of their claim or explain why they did not provide such documents and the steps taken to obtain them.

VI. Conclusion

[24] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-1948-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed; and
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1948-20

STYLE OF CAUSE: JAIRO ARTURO VILLARRAGA RIOS v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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