

Federal Court



Cour fédérale

Date: 20220304

Docket: IMM-2444-21

Citation: 2022 FC 307

Ottawa, Ontario, March 4, 2022

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**LUIS ANTONIO MINTEGUI FERREIRA
LAURA EL VIRA SOLE POUY
ADRIEL DOMINGUEZ SOLE (MINOR)
NAHIARA DOMINGUEZ SOLE (MINOR)**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The Refugee Appeal Division [RAD] confirmed the Refugee Protection Division [RPD] finding that the Applicants' s. 96 and 97 claims should be dismissed due to the Applicants not

being credible. This is the judicial review of the RAD's decision. The Applicants also raise the RAD's refusal to allow new evidence.

II. Background

[2] The Applicants are a family of four (4), including two children, from Uruguay. Their claim is based on Mr. Ferreira's [Principal Applicant] political activities and on the family's ethnicity as *Charrua*, an indigenous minority group.

[3] The Principal Applicant worked for the state-owned company producing petroleum product. He was a manager and involved in union organizing efforts. He claims that he learned that a company vice-president [RS] was involved in financial embezzlement. The Principal Applicant's problems allegedly began when RS became the Vice President of Uruguay. After that, the Principal Applicant claims he was harassed, threatened and beaten by supporters of RS's party.

[4] The Principal Applicant and family moved to family in Argentina. When he moved back home, RS supporters appeared at his home and threatened the Principal Applicant's wife. A few months later, the Principal Applicant was assaulted and shot, after which he fled and ultimately arrived in Canada.

[5] At the RPD, the Principal Applicant's claim was dismissed. The determinative issue was his credibility. He gave conflicting accounts of his political activity, failed to provide corroborating evidence of his disclosure of corruption in the National Party, his failure to provide

written evidence, submitting vague and detail-deficient medical evidence and such medical evidence was inconsistent with his evidence of where he was at the relevant time.

[6] In respect of his claim of ethnic persecution, he failed to file evidence of discrimination or of difficulties in obtaining social services due to his ethnicity.

[7] Lastly, the Principal Applicant was said to have failed to rebut the presumption of state protection.

[8] At the RAD, the Principal Applicant submitted new evidence in the nature of hospitalization certification, political party activity and two articles on the history of the *Charrua*.

[9] The RAD upheld the RPD's findings and ruled the new evidence inadmissible because neither the events referred to occurred before the RPD decision or were events which the Principal Applicant could or should have been expected to bring to the RPD.

[10] Of importance to the RAD was the Applicants' failure to challenge many of the RPD's credibility findings.

III. Analysis

[11] While the Applicants did not focus on the standard of review, the Respondent did. I agree with the Respondent that following the teachings in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the standard is reasonableness.

[12] I further agree that paragraphs 21-32 of the affidavit in respect of new evidence contains argument and are inadmissible. Rather than striking the affidavit, the Court will ignore the offending paragraphs.

[13] I do not accept the Applicants' position that somehow it can invoke in respect of s 110(4) of the *Immigration and Refugee Protection Act*, SC 2001, c 27, the procedural fairness obligations in s 62(6) of the *Refugee Protection Division Rules*, SOR/2012-256, dealing with reopening an abandoned application where there was a failure to observe a principle of natural justice.

Evidence that may be presented

110 (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection.

Éléments de preuve admissibles

110 (4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.

[14] There is no invocation of procedural fairness in s 110(4) and the provision creates a strict threshold criterion for the admissibility of new evidence which does not allow for the exercise of discretion. The evidence must fall into one of three categories or it is not admissible.

[15] That the Applicants were self-represented is of no relevance. Even if represented by counsel, the purported new evidence would not become admissible.

[16] The Applicants particularly challenge the RAD's assessment of state protection. While the Applicants are correct in arguing that the RAD was obliged to conduct an independent assessment of the evidence on this issue, that is what the RAD did.

[17] The Applicants contend that the RAD ignored their explanation for not approaching the police in Uruguay. However, the RAD specifically addressed the issue at paragraph 19 of its decision.

[18] In my view, a fair reading of the RAD decision shows that it conducted an independent analysis of state protection. The RAD is not required to comment on each point of evidence. The Applicants disagree with the RAD but cannot point to an error. Importantly, the Applicants put in no evidence of the power of the Vice President to control the police in such a manner as to negate the presumption and country condition evidence of the existence of state protection.

[19] Lastly, the Applicants' challenge to the RAD's credibility conclusions is unfounded. The RAD, while entitled to consider the RPD's conclusions on a correctness standard, engaged in its

own review of the apparent inconsistencies in the Principal Applicant's narrative, both internal and external inconsistencies.

[20] There is nothing unreasonable in the RAD's analysis or its conclusions.

IV. Conclusion

[21] Therefore, this judicial review will be dismissed. There is no question for certification.

JUDGMENT in IMM-2444-21

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

There is no question for certification.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2444-21

STYLE OF CAUSE: LUIS ANTONIO MINTEGUI FERREIRA, LAURA ELVIRA SOLE POUY, ADRIEL DOMINGUEZ SOLE (MINOR), NAHIARA DOMINGUEZ SOLE (MINOR) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

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JUDGMENT AND REASONS: PHELAN J.

DATED: MARCH 4, 2022

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