

Federal Court



Cour fédérale

Date: 20201117

Docket: IMM-9520-21

Citation: 2022 FC 1575

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 17, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

**NELA MIGUEL PEDRO
MOISES PEDRO MAUEJA
MIGUEL PEDRO DOS SANTOS**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The principal applicant, Ms. Nela Miguel Pedro (a citizen of Angola) and her minor sons, Miguel Pedro Dos Santos (also a citizen of Angola) and Moises Pedro Manueja (a citizen of Brazil), are applying for judicial review of a decision by the Refugee Appeal Division (RAD) on

December 11, 2021, which concluded that Ms. Pedro was not a credible witness and that the applicants had not established a serious possibility of persecution or demonstrated a prospective risk within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c. 27 [Act]. The applicants claim that the RAD's conclusions about the credibility of their allegations is based on an unreasonable analysis of certain evidence at the heart of their claim and that the RAD did not adequately analyze their claim under section 97 of the Act.

[2] For the following reasons, the application for judicial review will be dismissed.

II. Facts and underlying decision

[3] In her initial Basis of Claim (BOC) Form, signed on August 8, 2019, Ms. Pedro alleged that she feared individuals who reportedly tried to attack her partner in November 2017, after he misappropriated funds for himself from the political party of which he was a member, the National Union for the Total Independence of Angola [UNITA]. Following that incident, unidentified armed individuals reportedly broke into the family home one night. Being sought by members of UNITA and feeling that he was in danger, Ms. Pedro's partner reportedly organized the family's escape to Brazil on November 7, 2017. As they left the airport in Brazil, Ms. Pedro and her oldest son were reportedly forcibly confined by the driver of a taxi they had taken to go to the centre for refugee claimants, who forced them to move in with him and forced Ms. Pedro to become his partner – young Moises was apparently born of that relationship. On February 10, 2019, the applicants reportedly fled Brazil and crossed through several countries in the Americas before arriving in Canada.

[4] On June 3, 2021, four days before the RPD hearing, Ms. Pedro and her counsel presented a five-page amended account in her BOC, containing the following allegations:

- In May 2017, strangers broke into her home in Angola looking for her partner.
- They pointed a rifle at her and took turns raping her.
- After spending two days in the hospital, she did not go home, but went to her sister-in-law's instead.
- In September 2017, the assailants found her there and threatened her again with a rifle, ordered her to reveal where her partner was hiding and raped her.
- The next day, she was treated and went to live with a cousin.

[5] The RAD concluded that the RPD had correctly determined that Ms. Pedro's amendments to her BOC four days before the hearing were central to her claim and that the explanations she provided to justify adding that information were not satisfactory. The RAD also found that the RPD was correct in noting a contradiction between Ms. Pedro's testimony that her partner was being actively sought by UNITA since 2017 and a UNITA party membership card bearing her partner's name and submitted as evidence by Ms. Pedro, which was valid from May 24, 2021, to May 24, 2023. The RAD also affirmed the RPD's decision concerning Ms. Pedro's fear of her in-laws in Angola and found that there was no evidence on record that Ms. Pedro would be persecuted by them.

[6] With respect to the analysis under section 97 of the Act, the RAD found that the RPD concluded that the applicants had not met their burden of establishing a serious possibility of

persecution or their burden of showing on a balance of probabilities that they would personally face a risk within the meaning of section 97 if they were to return to Angola. The RAD concluded that the RPD had not erred in finding that its conclusions about the applicants' credibility were valid for the purposes of both section 96 and section 97 of the Act and that there was therefore no need for the RPD to proceed with a separate analysis based on section 97.

III. Analysis

[7] This application for judicial review raises only one issue: was the RAD's decision reasonable? The RAD's conclusions concerning the applicants' credibility must be examined based on the reasonableness standard of review (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 16-17; *Bouarif v Canada (Citizenship and Immigration)*, 2020 FC 49 at para 9 [*Bouarif*]).

[8] The applicants submit that the RAD did not conduct its own analysis of the psychological report submitted to the RPD by Ms. Pedro to justify the late addition of information to her BOC. In fact, the applicants claim that Ms. Pedro's omissions in her initial BOC were due to stress and that the psychological report submitted as evidence showed her mental state at that time. The RAD therefore allegedly erred in fact by not drawing inferences from that report on the justification of Ms. Pedro's omissions.

[9] In my view, the RAD clearly read that report. In fact, when it examined the RPD's reasons concerning it, the RAD noted that the RPD had considered the psychological report submitted as evidence, that it had not been satisfied that psychological factors could reasonably

explain the omission of significant events that took place in Angola, when Ms. Pedro herself had summarized her journey in detail in the report. In my opinion, the RAD simply concluded, in turn, that the presentation of an essentially new account four days before the hearing undermined Ms. Pedro's credibility. Indeed, Ms. Pedro's additions to her BOC were not trivial: they fundamentally changed the cause of her fear, namely, that she had allegedly been raped twice by her persecutors. In this respect, the RAD indicated that it had followed *Chairperson's Directive 4: Women Refugee Claimants Fearing Gender-Related Persecution*, and I note that the applicants did not present an argument on that issue. In fact, their submissions were limited to mentioning that the psychological report showed Ms. Pedro's mental state but did not cite a single passage from the report to support that assertion or explain how that mental state could justify such omissions. I find it hard to see how the applicants can claim that the RAD failed to draw inferences from a report that they themselves did not highlight. I am therefore not satisfied that the RAD's conclusions about Ms. Pedro's amendments to her initial BOC and the impact of those changes on the applicant's credibility were unreasonable.

[10] The applicants also claim that the UNITA party membership card bearing the name of Ms. Pedro's partner had only been introduced into evidence to show that he was a member of the party in question. They argue that, in its analysis, the RAD should have kept to the reason the membership card was produced and that it was unreasonable for the RAD to have drawn deviating conclusions about the applicants' credibility.

[11] I find that argument to be unfounded and note that the applicants did not cite any precedent in support of it. The case law from this Court is clear, however, and establishes that, as

specialized courts, the RAD and RPD are entitled to make any findings of credibility based on implausibilities, common sense and reason, as long as the underlying inferences are reasonable and clearly and explicitly articulated (*Jean v Canada (Citizenship and Immigration)*, 2020 FC 838 at para 17). In this case, it was not unreasonable for the RAD to have accepted the membership card and the applicant's allegation about Ms. Pedro's partner's membership in UNITA and then find that the card's period of validity, from 2021 to 2023, created a contradiction with another allegation by Ms. Pedro, namely that her husband was wanted for misappropriating funds since 2017. In fact, if Ms. Pedro's partner had been wanted by the members of UNITA since 2017, why would he have renewed his membership card in 2021? There is nothing in the applicants' arguments that would lead me to conclude that the RAD's decision in this respect was unreasonable.

[12] The applicants further argue that Ms. Pedro is at risk of being accused of adultery by her in-laws due to the likelihood that the father of her youngest son is not her partner. The applicants therefore argue that the RAD erred by noting in its decision that there was no evidence that Ms. Pedro would be persecuted by her in-laws, alleging that she could be killed because of her infidelity.

[13] In my view, the applicants' argument is purely speculative. Ms. Pedro has not been in contact with her in-laws since leaving Angola for Brazil. It is therefore hard to understand what reasonable grounds Ms. Pedro has for her fear, given the lack of any supporting submissions by the applicants. In this respect, I note that, in *Sanchez v Canada (Citizenship and Immigration)*, 2007 FCA 99 at para 15, the Federal Court of Appeal held that the analysis of a refugee claim is

based on an objective assessment of risk, rather than a subjective evaluation of the claimant's concerns. As a result, I see nothing unreasonable in the RAD's conclusions that Ms. Pedro's fears were insufficient to show a prospective risk.

[14] Lastly, the applicants argue that the RAD erred in law in concluding that section 97 of the Act did not apply because Ms. Pedro had proven that she feared for herself and her children if she were return to Angola. Again, the applicants did not provide any clear explanations in support of that argument. As it clearly noted in its decision, the RAD did not see how the RPD, once the credibility of the applicants' account was undermined, could have concluded that credibility was a determinative factor in assessing section 96 of the Act, but not for section 97. In this respect, Favel J. found at paragraph 23 of *Matsika v Canada (Citizenship and Immigration)*, 2019 FC 602, that the RPD was under no obligation to conduct a separate analysis under section 97 of the Act after considering a section 96 claim because, as part of that claim, the RPD had concluded that the applicant's allegations, which were found to not be credible, were the same for either provision. The same is true for this application, in which the RAD found that the RPD's negative findings about Ms. Pedro's credibility applied to both sections 96 and 97, as its analysis and conclusions were related to the essence of the applicants' refugee protection claims, namely the fear of harm. I see nothing unreasonable in that conclusion.

[15] For the reasons above, I find that the applicants have not met their burden of proving that the RAD's decision contained serious flaws in terms of reasonability that would warrant intervention by this Court.

[16] The application for judicial review is dismissed.

JUDGMENT in IMM-9520-21

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9520-21

STYLE OF CAUSE: NELA MIGUEL PEDRO, MOISES PEDRO
MAUEJA, MIGUEL PEDRO DOS SANTOS V THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 19, 2022

JUDGMENT AND REASONS: PAMEL J.

DATED: NOVEMBER 17, 2022

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