Federal Court Cour fédérale

Date: 20230405

Docket: IMM-6017-21

Citation: 2023 FC 485

Ottawa, Ontario, April 5, 2023

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

ANGIE PAOLA ARAGON CAICEDO
JUAN GABRIEL CHITIVA VARGAS
CRISTOFER CHITIVA ARAGON

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are citizens of Colombia. They assert fear of Mexican drug traffickers who threatened the Applicant, Angie Paola Aragon Caicedo, when she worked as a control agent at the airport in Bogota, and who attempted to recruit her to assist with their drug trafficking

efforts. After she left her job and moved within the city of Bogota, she recounts that they located and again threatened her because of her connections with former coworkers at the airport.

[2] The Applicants fled Colombia, first for the United States of America where they did not make a refugee claim, and then for Canada several months later.

[3] The Refugee Protection Division [RPD] of the Immigration and Refugee Board of Canada dismissed the Applicants' claim, finding the existence of an internal flight alternative [IFA] in Tunja determinative [Decision]. The Applicants seek judicial review of the Decision.

[4] The main issue for the Court's determination is whether the Decision is intelligible, transparent and justified, in short whether it is reasonable further to the applicable, presumptive standard of review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 25, 99.

[5] For the reasons below, I find the Applicants have not satisfied their onus of demonstrating that the Decision is unreasonable: *Vavilov*, above at para 100. I therefore dismiss their judicial review application.

II. Analysis

[6] The Applicants have not convinced me that the Decision is based on an illogical or irrational chain of analysis or that there is a fatal flaw in the RPD's overarching logic: *Vavilov*, above at paras 85, 102.

[7] As a preliminary matter, the Respondent requests the style of cause be amended to correct the name of the minor Applicant from Cristofer Chitiva Vargas to Cristofer Chitiva Aragon. The Applicants made no submissions objecting to the proposed change. Noting the certified tribunal record shows the minor Applicant's name on his passport and Colombian identity card as Cristofer Chitiva Aragon, and that this name is shown in other documents in the Applicant's record, including the cover page and the supporting affidavit of Mahjabeen Wazir Sheikh, the Court orders the style of cause amended accordingly with immediate effect.

[8] A claim for refugee protection will fail if the claimant has a viable IFA: *Thirunavukkarasu v Canada (Minister of Employment and Immigration),* 1993 CanLII 3011 (FCA), [1994] 1 FC 589 [*Thirunavukkarasu*]. The two-part test to establish a viable IFA is not in dispute. To maintain the claim for protection, the refugee claimant bears the burden of establishing, on a balance of probabilities, that (i) there is a serious possibility of persecution in the proposed IFA; and (ii) objectively, considering all the circumstances including those particular to the Applicants, it would be unreasonable or unduly harsh for them to move there: *Thirunavukkarasu,* above; *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991CanLII 13517 (FCA), [1992] 1 FC 706; *Olasina v Canada (Citizenship and Immigration),* 2021 FC 103, at para 4; and *Haastrup v Canada (Citizenship and Immigration),* 2020 FC 141, at para 29.

[9] As I explain, the RPD in my view reasonably took into account, when considering the first prong of the IFA test, the insufficiency of evidence regarding the means and motivation of

the asserted agents of persecution; the RPD cannot be expected to make decisions in a vacuum: *Torres Zamora v Canada (Citizenship and Immigration),* 2022 FC 1071 at para 14.

[10] With respect to the first prong of the IFA test outlined above, the Applicants argue that they are not required to identify their agents of persecution nor to provide corroborative evidence of their identity, to support their claim: *Diaz v Canada (Citizenship and Immigration),* 2010 FC 797 at paras 19-22; *Urbano v Canada (Citizenship and Immigration),* 2016 FC 1258 at paras 2, 6-11. As noted by the Respondent, however, these two cases are distinguishable because the issue of the identity of the agents of persecution was not considered in the context of an IFA analysis which the Court found had other reviewable flaws.

[11] Regardless of whether the agents of persecution are identifiable, and even though the Applicants' credibility is not in issue, the burden still rests on the Applicants to demonstrate with concrete evidence that an IFA is not viable once it has been raised by the RPD: *Vyshnevskyy v Canada (Citizenship and Immigration),* 2020 FC 881 [*Vyshnevskyy*] at paras 32-34; *Iyere v Canada (Citizenship and Immigration),* 2018 FC 67 at paras 41-42; *Cherednyk v Canada (Citizenship and Immigration),* 2021 FC 873 at para 29.

[12] Further, the RPD must assess the means and motivation of the agents of persecution in a prospective analysis considered from the perspective of the agents of persecution rather than the claimants: *Adeleye v Canada (Citizenship and Immigration),* 2022 FC 81 at para 21. In my view, the RPD here reasonably considered the means and motivation of the agents of persecution and found the Applicants' testimony and evidence about their influence and reach (i.e. to the effect

that they would use their connections to locate the Applicants and that corrupt police might help them) was speculative.

[13] The RPD also found that the agents of persecution would no longer have an interest in pursuing Ms. Aragon Caicedo, not only because the passage of time (three years) since she was approached or contacted by them, but also because she no longer has connections with the airport in Bogota. It was not an error for the RPD to consider the passage of time, absent sufficient objective evidence that the agents of persecution remain interested in the Applicants: *Vyshnevsky*, above at paras 33-35. Further, the RPD intelligibly explained that while the Applicants' testimony establishes the presence of the agents of persecution in Bogota, it would be speculative to find they have influence or presence in other cities such as Tunja.

[14] Contrary to the Applicants' submission, I find that the RPD reasonably considered their documentary evidence, which the RPD is presumed to have considered unless the contrary is shown: *Basanti v Canada (Citizenship and Immigration),* 2019 FC 1068 at para 24. For example, regarding the letter from the neighbour stating that people still were searching for the Applicants, the RPD assigned it no weight because it states that it is unknown whether the people who to this day knock on the door and ask for the Applicants are the same or different people.

[15] The Applicants have failed to convince me that the RPD's reasoning is illogical in the circumstances, or that the RPD should have inferred the people still asking around for them were the same agents of persecution. The latter in my view is an impermissible request to reweigh the evidence and come to a different conclusion, which is not this Court's role on judicial review:

Vavilov, above at para 125; *Sunday v Canada (Citizenship and Immigration),* 2021 FC 266 at para 3.

[16] Further, the fact that it was open to the RPD to make an evidentiary inference more favourable to the Applicants does not mean that the RPD's evidentiary assessment was flawed*:* *Zhou v Canada (Citizenship and Immigration),* 2020 FC 676 at para 21; *Solis Mendoza v Canada (Citizenship and Immigration)*, 2021 FC 203 at para 43; *Popoola v Canada (Citizenship and Immigration),* 2022 FC 555 at para 15.

[17] In my view, it also was open to the RPD to conclude it would be speculative to find that the Applicants face a serious possibility of persecution in the IFA having regard to the objective country conditions evidence that identifies numerous Mexican drug trafficking groups in Colombia. As the RPD reasonably explained, the conclusion is based on the insufficiency of evidence concerning to which of the many trafficking groups in Columbia the agents of persecution belong.

[18] With respect to the second prong of the IFA test, I am not persuaded that the RPD disregarded evidence regarding employment discrimination faced by women in Colombia or evidence regarding the Applicants' mental health, or otherwise erred overall in its analysis of the reasonableness of relocating to the IFA.

[19] I agree with the Respondent that the RPD's findings on the second part of the test are justified, intelligible, and transparent, based on the record before it: *Vavilov,* above at para

99-101. The RPD considered the Applicants' backgrounds and profiles and found that it was not objectively unreasonable for them to relocate to Tunja, in light of their personal circumstances. The RPD also analyzed the evidence on the Applicants' mental health and found insufficient evidence to suggest that the Applicants would be unable to access mental healthcare in Tunja.

[20] The Applicants' submissions in this regard again amount to a request to reweigh evidence, in my view. I find the Applicants have failed to explain any errors in the RPD's analysis. For example, the Applicants argue that women face employment discrimination in Colombia and cite supporting country conditions evidence. The Applicants, however, do not describe how the RPD erred with respect to this evidence. Further, although the RPD did not mention this evidence specifically, decision makers are not required to address every piece of evidence: *Canada (Attorney General) v Clegg,* 2008 FCA 189 at paras 29-44, citing *Cepeda-Gutierrez v Canada*, 1998 CanLII 8667 (FC), [1998] F.C.J. No. 1425 (F.C.).

III. Conclusion

[21] For the above reasons, I am not convinced that the RPD decision is unreasonable. I therefore dismiss the Applicant's judicial review application.

[22] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-6017-21

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended with immediate effect to change the name of the Applicant, Cristofer Chitiva Vargas to read: Cristofer Chitiva Aragon.
2. The Applicants' judicial review application is dismissed.
3. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-6017-21
STYLE OF CAUSE:	ANGIE PAOLA ARAGON CAICEDO, JUAN GABRIEL CHITIVA VARGAS, CRISTOFER CHITIVA ARAGON v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD VIA VIDEOCONFERENCE
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