Federal Court Cour fédérale

Date: 20240311

Docket: IMM-4847-23

Citation: 2024 FC 410

Ottawa, Ontario, March 11, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

ANDRES SORIANO JIMENEZ
ALEJANDRA GARCIA MEJIA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Mr. Andres Soriano Jimenez and Mrs. Alejandra Garcia Mejia [the Principal Applicant and the Associate Applicant] seek judicial review of a decision made by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] on March 28, 2023 [the Decision]. The RAD upheld the decision of the Refugee Protection Division [RPD] of the IRB that found the Applicants were not Convention refugees under section 96 of the *Immigration and*

Refugee Protection Act, SC 2001, c 27, nor persons in need of protection under subsection 97(1) of the Act. It further found that they had a viable internal flight alternative [IFA].

[2] The Applicants argue that the RAD made several errors in rendering the Decision. They say that the RAD erred in confirming the RPD's credibility findings, that the RAD breached procedural fairness in making its own credibility findings, that the RAD's IFA assessment was unreasonable, and that the RAD erred in not accepting the new evidence which the Applicants submitted.

[3] For the reasons that follow, I dismiss this application. The RAD did not breach procedural fairness and did not err in refusing to accept the new evidence tendered by the Applicants. Further, I find that the RAD did not take an overzealous approach in assessing the Applicants' credibility, which would taint its IFA assessment. Though I agree with the Applicants that some of the RAD's findings are based on minor inconsistencies and contradictions, the cumulative effect of those inconsistencies can support an overall finding that the Applicants' narrative is not credible. This is especially so where some of the identified inconsistencies are central to the Applicants' claim.

I. Background

[4] The Applicants are married citizens of Mexico. The Associate Applicant has a 12-year-old daughter born and living in Mexico, and the Applicants together share a four-year-old son who was born in Canada and resides with them.

[5] The Applicants first arrived to Canada from Mexico on July 22, 2017. They stayed in Canada for five months before returning to Mexico in January 2018. They returned to Canada on May 25, 2018, and have since then remained living here without status.

[6] The Applicants allege that they fled Mexico due to fear of their lives, and now also their son's life, at the hands of the notorious drug cartel, Jalisco New Generation Cartel [CJNG]. In particular, the Applicants fear one "El Kilo", the head of the CJNG for the city of Morelos, their hometown. The Principal Applicant alleges that he was introduced to El Kilo by his now-deceased friend at a party at the end of May/early June 2017. At this party, El Kilo allegedly intended to recruit the Principal Applicant to distribute cocaine for the CJNG. Due to his unwillingness to sell drugs, the Principal Applicant alleges that the Applicants became targets for the CJNG. After an alleged attack on the Associate Applicant in June 2017, the Applicants fled Mexico to stay with the Principal Applicant's aunt in Brampton, Ontario for five months. Upon their return to the same city in Mexico, the Applicants allege that the Principal Applicant was kidnapped by the CJNG on April 30, 2018, and held for ransom for two days. The Principal Applicant's father allegedly paid the CJNG a total of 500,000 pesos for the Principal Applicant's release. Afterwards, the Applicants fled Mexico for Canada once again.

[7] The Applicants made their claim for refugee protection in November 2020. On November 21, 2022, the RPD heard their claim. At the hearing, the RPD member acknowledged that the Applicants were self-represented and assisted by a Spanish interpreter. As such, the RPD member allowed the Applicants to show articles not previously provided as late disclosures.

The Minister of Immigration, Refugees and Citizenship intervened on the basis of credibility, by only filing documents.

[8] On November 25, 2022, the RPD rejected the Applicants' claim for refugee protection, primarily on the basis that it found the Applicants were not credible as to what occurred in Mexico and that an IFA existed in Merida and Campeche, Yucatan, Mexico.

II. Decision under Review

[9] On March 28, 2023, the RAD upheld the RPD's decision, finding that the Applicants were neither Convention refugees nor persons in need of protection under the Act, and had a viable IFA in Merida, Yucatan.

[10] The RAD began by noting that the Applicants submitted a preponderance of new evidence including declarations from the Principal Applicant's father and the Applicants' friends and acquaintances, a medical report dated January 3, 2023, the death certificate of the Associate Applicant's mother dated February 19, 2021, affidavits from Mexican law enforcement, news articles, and photographs. Citing subsection 110(4) of the Act, the RAD rejected most of the new evidence as it was or concerned information that was reasonably available at the time of the RPD hearing in November 2022. The RAD only accepted the affidavits of a military officer and police officer that contained contemporary information about the operations of the CJNG across Mexico.

[11] The RAD further noted that the Applicants did not request an oral hearing and that, in any case, its jurisdiction to hold an oral hearing is limited to situations where admissible new evidence raises a serious issue of credibility, is central to the decision, and determinative of the claim. The RAD determined that the only admissible new evidence did not meet this threshold.

[12] In its analysis, while the RAD disagreed with the RPD's general finding of a lack of credibility, the RAD agreed that there was insufficient credible evidence to support that the Applicants or their family members were targeted by the CJNG after June 2017. In particular, the RAD found that the Principal Applicant's testimony relating to his alleged abduction on April 30, 2018, was not credible. It was concerned with the following inconsistencies between the Principal Applicant's testimony and his Basis of Claim [BOC], some of which were not raised by the RPD:

- The Principal Applicant failed to mention in his BOC that he heard other people being tortured and begging to be released while being housed by the CJNG, which was his testimony at the hearing.
- The Principal Applicant stated in his BOC that he recognized El Kilo's voice in the van that he was abducted in, whereas in his oral testimony he gave no indication that El Kilo was among the individuals in the van with him, or that he recognized any voices until after he was in the CJNG's safe house.
- The Principal Applicant testified that the CJNG continued to call his father after his release and made escalating demands for monthly payments of up to 750,000 pesos to avoid further harm to the Principal Applicant. This was inconsistent with the letter from the Principal Applicant's father, submitted to the RPD, which stated that

the CJNG asked him to pay 500,000 pesos per month. The Principal Applicant testified that he was not sure why his father would provide different information.

- The medical report describing the treatment the Principal Applicant received after his alleged abduction, as put forward to the RPD, stated that the Principal Applicant was admitted and released on May 2, 2018, and that his injuries included a wound caused by a canine. However, the Principal Applicant testified that he was released by the CJNG on May 3, 2018, that he was treated for numerous cigarette burns which were not mentioned in the report, and that he never indicated a dog was involved in his assault. The Principal Applicant testified that the report contains mistakes and it was written two years after the incident.
- The Principal Applicant testified that the CJNG contacted his father the same day that he was receiving medical treatment at the clinic whereas his BOC states that this happened in the "following days."

[13] Of the inconsistencies, the RAD considered the most significant was that the Principal Applicant's BOC narrative gave no indication that the extortion amount increased from 500,000 pesos, despite that being central to his oral testimony as demonstrating the CJNG's continued and increasing motivation in targeting the Applicants. The RPD did not make this finding.

[14] As the Associate Applicant relied largely on the Principal Applicant's testimony and BOC, the negative credibility finding was imposed on her. However, the RAD accepted, like the

RPD, that the Associate Applicant was assaulted in June 2017. As such, it continued to conduct an IFA assessment.

[15] The RAD found the Applicants have a viable IFA in Merida. While the RAD acknowledged that the CJNG is pervasive throughout Mexico, it agreed with the RPD that the Applicants failed to establish, on a balance of probabilities, that the CJNG possesses the motivation to find and harm them in Merida.

III. Preliminary Issue

[16] Counsel for the Applicants noted at the outset of the hearing that the Respondent failed to meaningfully respond to many of the Applicants' submissions and provided very limited support rooted in the jurisprudence for the submissions that it did make.

[17] I agree with Applicants' counsel that the Respondent's submissions were general in nature and, in many instances, non-responsive to the Applicants' arguments. The Respondent did not provide any justification for its deficiencies. While I acknowledge that the Respondent's counsel who appeared is different from counsel who provided written submissions on the Respondent's behalf, I nonetheless cannot consider any new arguments raised by the Respondent at the hearing that were not provided in writing. Doing so risks prejudicing the Applicants: *Kabir v Canada (Citizenship and Immigration)*, 2023 FC 1123 at para 19; *Ali v Canada (Citizenship and Immigration)*, 2021 FC 731 at para 51; *Riboul v Canada (Citizenship and Immigration)*, 2020 FC 263 at para 43; *Abdulkadir v Canada (Citizenship and Immigration)*, 2018 FC 318 at para 81; *Del Mundo v Canada (Citizenship and Immigration)*, 2017 FC 754 at

para 14; *Dave v Canada (Minister of Citizenship and Immigration)*, 2005 FC 510 at para 5; *Coomaraswamy v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 153 para 39.

IV. Issues

[18] The Applicants submit the following issues for determination on this application:

1. Did the RAD err in confirming the RPD's credibility findings?
2. Did the RAD breach procedural fairness with respect to its own credibility findings?
3. Was the RAD's IFA assessment reasonably made?
4. Did the RAD err in not accepting the father's new letter and new medical report as new evidence?

[19] I find this application raises the following two issues:

1. Did the RAD breach a duty of procedural fairness owed to the Applicants by making credibility findings in the absence of an oral hearing?
2. Is the Decision reasonable?

V. Standard of Review

[20] The Applicants submit that the issue of procedural fairness is reviewable on the standard of correctness. The Respondent did not make submissions on this point. I disagree with the Applicants on the standard of review applicable to procedural fairness issues. While I acknowledge that many courts, including the Federal Court, have stated on previous occasions

that the correctness standard applies to procedural fairness issues, as Justice Gascon recently wrote in the context of assessing alleged veiled credibility findings, "procedural fairness does not truly require the application of the usual standards of judicial review:" *Nourani v Canada (Citizenship and Immigration)*, 2023 FC 732 at para 18, citing *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 [*CARL*] at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at para 54. Instead, reviewing courts are tasked with determining whether the procedure followed by the decision-maker respected standards of fairness and natural justice, taking into account the particular context and circumstances at issue. As observed by the Federal Court of Appeal in *CARL* at paragraph 35, "[w]hat matters, at the end of the day, is whether or not procedural fairness has been met."

[21] On assessing the merits of the Decision, I agree with the parties that the standard of review is reasonableness, as articulated by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[22] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12–13. The court must give considerable deference to the decision-maker, as the entity delegated power from Parliament and who is equipped with specialized knowledge and understanding of the "purposes and practical realities of the relevant administrative regime" and "consequences and the operational impact of the decision" that the reviewing court may not be attentive towards:

Vavilov at para 93. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125.

[23] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. The burden to justify is increased when the decision's impact on an individual's rights and interests is severe, as in cases involving claimants for refugee protection: *Vavilov* at para 133; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 76.

[24] Reasons "are the primary mechanism by which administrative decision makers show that their decisions are reasonable:" *Vavilov* at para 81. However, reasons "must not be assessed against a standard of perfection" and administrative decision makers should not be held to the "standards of academic logicians:" *Vavilov* at paras 91, 104. Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis:" *Vavilov* at para 128.

[25] For a decision to be found unreasonable, the applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep:" *Vavilov* at para 100.

VI. Legal Principles

A. *The RAD has limited discretion to hold an oral hearing*

[26] The provisions of the Act make it clear that the RAD conducts a paper-based appeal, subject to specific exceptions.

[27] Subsection 110(3) of the Act provides:

Subject to subsections (3.1), (4) and (6), the Refugee Appeal Division must proceed without a hearing, on the basis of the record of the proceedings of the Refugee Protection Division, and may accept documentary evidence and written submissions from the Minister and the person who is the subject of the appeal and, in the case of a matter that is conducted before a panel of three members, written submissions from a representative or agent of the United Nations High Commissioner for Refugees and any other person described in the rules of the Board.	Sous réserve des paragraphes (3.1), (4) et (6), la section procède sans tenir d'audience en se fondant sur le dossier de la Section de la protection des réfugiés, mais peut recevoir des éléments de preuve documentaire et des observations écrites du ministre et de la personne en cause ainsi que, s'agissant d'une affaire tenue devant un tribunal constitué de trois commissaires, des observations écrites du représentant ou mandataire du Haut-Commissariat des Nations Unies pour les réfugiés et de toute autre personne visée par les règles de la Commission.

[emphasis added]

[28] Subsection 110(6) of the Act gives the RAD discretion to hold a hearing where three conditions are met:

The Refugee Appeal Division may hold a hearing if, in its opinion, there is documentary evidence referred to in subsection (3)	La section peut tenir une audience si elle estime qu'il existe des éléments de preuve documentaire visés au paragraphe (3) qui, à la fois :
(a) that raises a serious issue with respect to the credibility of the person who is the subject of the appeal;	**a)** soulèvent une question importante en ce qui concerne la crédibilité de la personne en cause;
(b) that is central to the decision with respect to the refugee protection claim; and	**b)** sont essentiels pour la prise de la décision relative à la demande d'asile;
(c) that, if accepted, would justify allowing or rejecting the refugee protection claim.	**c)** à supposer qu'ils soient admis, justifieraient que la demande d'asile soit accordée ou refusée, selon le cas.

[29] Apart from the requirements of subsection 110(6) of the Act, this Court has held that the RAD may be required to provide an applicant with notice and an opportunity to make submissions where the RAD raises "new issues" that were not raised on appeal: *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 [*Ching*] at para 71.

B. *The RAD is entitled to make findings of credibility*

[30] In *Cooper v Canada (Citizenship and Immigration)*, 2012 FC 118 at paragraph 4, Justice Rennie summarized the key principles which govern the assessment of credibility, the relevant portions for this application are reproduced below:

a. A board is entitled to make findings of credibility based on implausibility, common sense and rationality;

b. Uncontradicted evidence may be rejected if it is not consistent with the probabilities of the case as a whole, or where inconsistencies are found in the evidence;

c. Inferences must be reasonable and must be set out in clear and unmistakable terms;

d. Not all inconsistencies and implausibilities will support a negative finding of credibility. Adverse credibility findings should not be based on microscopic examination of issues irrelevant or peripheral to the claim;

[…]

h. Where a credibility finding is based on inconsistencies of the applicant, specific examples of inconsistency must be set out. The inconsistency must arise in respect of other evidence which was accepted as trustworthy. Put otherwise, an inconsistency can arise in one of two ways: evidence is internally inconsistent in the testimony of the witness, or; evidence that is inconsistent with respect to the testimony of other witnesses or documents. If, in the later situation, that of external inconsistency, the evidence on which the inconsistency is predicated must be accepted as trustworthy;

i. The cumulative effect of minor inconsistencies and contradictions can support an overall finding that an applicant is not credible; and

j. A general finding of a lack of credibility may conceivably extend to all relevant evidence emanating from the testimony of a witness.

[footnotes omitted]

C. *The RAD has limited discretion to admit new evidence*

[31] Subsection 110(4) of the Act governs when new evidence can be admitted to the RAD:

On appeal, the person who is the subject of the appeal may present only evidence that	Dans le cadre de l’appel, la personne en cause ne peut présenter que des éléments de

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.	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.

[32] If new evidence meets these requirements, the RAD must assess the admissibility of the new evidence for its credibility, relevance, and newness: *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 at para 49.

VII. Analysis

A. *The RAD did not breach a duty of procedural fairness*

[33] The Applicants submit that the RAD breached the duty of procedural fairness owed to them by reviewing findings of credibility without providing them with an opportunity to address those findings, namely through an oral hearing. Citing this Court in *Abraha v Canada (Citizenship and Immigration)*, 2022 FC 100 [*Abraha*], which the RAD distinguished, the Applicants argue that the RAD similarly breached procedural fairness by making new adverse credibility findings on points that the RPD did not raise without giving them an opportunity to respond. In particular, they say the RAD improperly considered the fact that the Principal Applicant stated in his BOC that he recognized the voice of El Kilo in the van and that the Principal Applicant testified that the CJNG contacted his father on the same day he was receiving treatment from his alleged abduction. The Applicants argue that the RAD ought to

have referred the matter back to the RPD to hear the oral evidence considering the RAD's concerns: *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103.

[34] The Respondent made no submissions on this point, except to say that the RAD did not raise new issues on appeal.

[35] I find that the RAD did not breach any duty of procedural fairness owed to the Applicants in not holding an oral hearing. As the RAD noted in its reasons, the Applicants did not request an oral hearing. The RAD nevertheless considered whether an oral hearing was warranted based on the evidence it accepted as new. It found that the limited new evidence it admitted did not warrant holding an oral hearing under subsection 110(6) of the Act, as it did not raise a serious issue of credibility and was not determinative of the Applicants' claim.

[36] Further, the Applicants put the issue of their credibility squarely before the RAD, arguing that the RPD erred in finding that the Principal Applicant's oral testimony was not credible. While the RAD made additional findings of credibility that differed from those of the RPD, I agree with the RAD that this does not constitute a "new issue" under *Ching* requiring the RAD to provide the Applicants with an opportunity to respond. This case can be distinguished from *Abraha* where the RAD made new credibility findings on documents that the RPD did not consider at all as part of its credibility analysis. Here, the RAD's additional credibility findings were based on documents and evidence that the RPD directly put to the Applicants. The Applicants were aware that the RPD, and subsequently the RAD, had credibility concerns over the Principal Applicant's testimony regarding his alleged abduction. The RPD questioned the

Principal Applicant in detail on his testimony and the discrepancies that arose between it, his BOC, and the supporting evidence. The RAD's credibility findings, though some new, were based on the very same evidence that formed the basis of the RPD's decision.

[37] In any event, the adverse credibility findings that the Applicants argue the RAD raised as new were not necessarily determinative, in themselves, of the Decision.

B. *The Decision is reasonable*

[38] The Applicants advance a number of arguments in support of their submission that the Decision is unreasonable.

[39] First, the Applicants argue that the RAD made unreasonable findings of fact that were not supported by and, in some instances, contradictory to the evidence. Specifically, the Applicants submit that the RAD erred in upholding the RPD's findings that the Principal Applicant's allegations about his abduction were not credible and the medical report was fraudulent or the injury did not occur in the manner alleged by the Principal Applicant. The Applicants argue that the RAD failed to undertake an independent assessment of the evidence including reviewing and seriously considering letters from the Applicants' friends and acquaintances who attested to the Principal Applicant's alleged abduction. In doing so, the Applicants submit that the RAD erroneously ignored potentially corroborative evidence after questioning the Principal Applicant's credibility: *Li v Canada (Citizenship and Immigration)*, 2019 FC 307 at para 18. Further, the Applicants submit that the RAD erred by being silent on evidence indicating that the Principal Applicant mentioned in his BOC that he was bitten by rats, which may explain the

discrepancy in the medical report that claims he suffered from a canine bite. In overlooking this potentially contradictory evidence, the RAD made a reviewable error: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC 53 at para 17.

[40] Second, the Applicants argue that the RAD erred in upholding the RPD's credibility findings that were based on microscopic inconsistencies and an overzealous approach of scrutinizing the evidence. They argue that nearly all of the adverse credibility findings the RAD drew, except with regard to the increasing extortion sum, are peripheral to their claim or based on unreasonable inferences. The Applicants submit that the fact the Principal Applicant did not include in his BOC that he heard other tortured individuals in the CJNG's safe house was not central to the Applicants' claim: *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paras 18–19. Further, the Applicants submit it was unreasonable for the RAD to rely on the discrepancy of one day between the date listed on the medical report and the Applicants' testimony, and the omission of any reference to cigarette burns in the medical report, as they are minor errors, especially given that the report was prepared two years after the alleged abduction. Additionally, the Applicants submit that the RAD erred in finding that the Principal Applicant gave no indication in his testimony that El Kilo was among the persons in the van with him as a review of the RPD transcript reveals that the RPD member interrupted the Principal Applicant while he was describing what happened when he was taken into the van. Similarly, the transcript of the RPD hearing reveals that it is unclear whether the Principal Applicant testified that his father received calls the same day he was receiving treatment in the clinic, which the RAD noted as another inconsistency. Finally, the Applicants submit that the RAD was overzealous in scrutinizing the letter of the passerby for missing elements on who or what

caused the Principal Applicant's injuries, rather than engaging with the content that it does contain: *Shi v Canada (Citizenship and Immigration)*, 2022 FC 196 at para 53; *Nagarasa v Canada (Citizenship and Immigration)*, 2018 FC 313 at para 23.

[41] Third, and flowing from the submissions described above, the Applicants argue that the RAD erred in its IFA assessment. This is because the RAD based its IFA assessment on finding that there was no forward-facing risk to the Applicants in Merida, given its finding that the Principal Applicant's testimony on his alleged abduction was not credible.

[42] Fourth, and finally, the Applicants argue that the Decision is unreasonable as the RAD rejected most of the new evidence the Applicants put forward, particularly the updated medical report and declaration from the Principal Applicant's father. The Applicants claim that the RAD failed to consider the third criterion of subsection 110(4) of the Act: that the evidence was reasonably available, but that the Applicants could not reasonably have been expected in the circumstances to have presented, at the time of rejection. Citing this Court in *Denis v Canada (Citizenship and Immigration)*, 2018 FC 1182 at paragraph 65, the Applicants argue that the RAD ought to have considered the Applicants' reasonable expectations in the circumstances, including their justifiable surprise that the evidence they presented was insufficient. Especially considering the RPD rendered its decision just four days after the hearing was held, the Applicants argue they did not have time to submit new evidence gathered from overseas that addressed the concerns raised in the hearing related to the father's letter and medical report. The Applicants further take issue that the RAD failed to consider the Principal Applicant's explanation that the errors in the medical report were likely attributable to the fact that it was

written two years after the event by a person who was not the Principal Applicant's attending physician. The Applicants argue that the RAD again relied on minor inconsistencies to question the new medical report's credibility, such as the fact that the Principal Applicant testified he was at the hospital for 5-6 hours whereas the updated report provides he was there for 12 hours and that the updated report mistakenly refers to the original report as a "prescription." At the hearing, Applicants' counsel stressed that the RAD ought to have exercised its discretion broadly under subsection 110(4) of the Act, considering that the Applicants were self-represented before the RPD and RAD.

[43] The Respondent submits that the Applicants' arguments are without merit. With respect to the RAD's credibility findings, the Respondent argues that it was reasonable for the RAD to make findings based on inconsistencies between the Applicants' BOC, the evidence submitted by the Applicants, and the Applicants' testimonies at the RPD hearing: *Pooya v Canada (Citizenship and Immigration)*, 2018 FC 1019 at para 18; *A.B. v Canada (Citizenship and Immigration)*, 2016 FC 1385 at para 133; *Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 23. The Respondent highlights that the BOC must contain all the important facts and details about a claim, and failing to do so can affect the credibility of all or part of a claimant's testimony: *Ogaulu v Canada (Citizenship and Immigration)*, 2019 FC 547 at paras 18–20.

[44] Regarding the RAD's rejection of the Applicants' evidence, the Respondent submits that it was reasonable for the RAD to reject the evidence that could have been available to the Applicants at the RPD hearing. The Respondent argues that it was open and reasonable for the

RAD to reject the updated versions of the evidence the RPD already had. In particular, the Respondent points out the updated medical report still contained inconsistencies with the Principal Applicant's testimony, raising the issue of whether the report was sufficiently credible or trustworthy.

[45] I find that the RAD did not err in its credibility assessment, which in turn did not render its IFA assessment unreasonable. Further, I find the RAD reasonably exercised its discretion to reject the majority of the Applicants' new evidence.

[46] On its credibility assessment, I agree with the Respondent that the various material inconsistencies in the Principal Applicant's narrative reasonably undermine his credibility. While I agree with the Applicants that some of the RAD's findings are peripheral to central aspects of the Applicants' claim or otherwise based in flawed reasoning, such as noting the Principal Applicant's failure to mention in his BOC that he heard other tortured individuals in the safe house or failure to mention in his oral testimony that he heard El Kino's voice in the van, the significant inconsistencies that the RAD points out are indeed central to the Applicants' claim. That is, the RAD took issue that the Principal Applicant's testimony that his father received increasing demands for money was not corroborated by his BOC nor his father's declaration. This was an element that the Applicants specifically pointed to during the oral hearing to demonstrate the CJNG's continued motivation in targeting them:

> **MEMBER:** Okay, and why do you fear the leader, El Kilo?
>
> **PRINCIPAL CLAIMANT:** Okay, because this person threatened me, he tortured me, he kidnapped me for two (2) days, and when I was freed, the amount of money that my father paid in ransom to let me go was not enough. It became a monthly quota that my father had to pay. He was to pay this quota in order that these

> people could not do me harm. And what happened is that since these people were consistently in contact with my father to force him to pay the quota, the quota continuously went up. And that is why I am currently a target of the cartel and why they continue to pursue me, because I basically escaped the cartel and made a mockery of them.
>
> […]
>
> **MEMBER:** Now, to your knowledge, how much did your father pay for your release?
>
> **PRINCIPAL CLAIMANT:** My father paid 500,000 pesos in cash, and when it became a monthly quota, the amount increased first to 600,000 and then to 750,000 pesos monthly
>
> […]
>
> **MEMBER:** Okay. Your father does not mention any increase of demands for money other than, and I am just going to go to the, sorry, let me just see if I can center this a bit, 100%, okay. The payments of 500,000 pesos, and he also says later that they demanded another 500,000 pesos, but you have indicated that the demands were for more and more 650,000, 750,000 pesos. I have not asked the question yet, sir. Can I ask why your father does not, to your recollection, do you know why your father omitted this information?
>
> **PRINCIPAL CLAIMANT:** I do not know what the reason would be. All I know is this is the letter my father handed in, and I do not know why he did not include that information.
>
> [emphasis added]

[47] The Principal Applicant's father's declaration submitted to the RPD reads in part:

> On April 30th, a person who identified himself as a member of the Jalisco New Generation Cartel contacted me by phone telling me that I had to pay 500,000 pesos in cash if I wanted to see my son alive again; and that if I tried to report the kidnapping to the authorities, my son would be killed. I managed to gather the money on May 2nd and delivered it to the agreed address. After I found my son, I kept getting more calls on my cell phone number asking me to pay 500,000 pesos every month so they would leave my son alone.

[48] The Applicants' BOC similarly only notes that the Principal Applicant's father received an initial call asking for 500,000 pesos to set him free and another call asking for the same amount in the days following his release.

[49] In their memorandum to the RAD on appeal, the Applicants continued to stress that the CJNG's ongoing motivation to harm them is evidenced, at least in part, from the alleged increasing extortion amount:

> The main motivation for them to keep looking for me and target me to kill me or make an attempt on my life is that I did not want to collaborate with their claims, and that led them to lose money, because I did not agree to form small gangs -motorbike group- to sell drugs and arms trafficking and also they requested my father to pay an extortion of 500, and then increased the amount. It is a clear example of why they continue to have the motivation to kill me if I return to my country.

[50] While I understand the Applicants' frustration that the RAD made other findings that I may have disagreed with, one must remember that the RAD is not held to the standard of perfection and it is not the role of the reviewing court to reweigh the evidence: *Vavilov* at para 125. As a whole, I find the RAD's credibility analysis to be reasonable. As such, I equally find the RAD's IFA assessment to be reasonable, as based on its credibility assessment.

[51] In regard to the RAD's refusal to admit the Principal Applicant's father's new declaration and the updated medical report as new evidence, I find that the RAD reasonably rejected this evidence. Contrary to the Applicants' submission, the RAD does not have broad discretion to admit new evidence even in the face of self-represented litigants. Instead, it can only admit evidence if conditions in subsection 110(4) of the Act have been met: *Canada (Citizenship and*

Immigration) v Singh, 2016 FCA 96 at paras 34–35. The RAD undertook a detailed analysis of whether all of the Applicants' new evidence, including the father's letter and updated medical report, could be admitted under the Act. With respect to the two pieces of evidence at issue, the RAD rejected them on the basis that they concerned events central to the Applicants' claim which took place before the RPD decision and were reasonably available or could reasonably have been expected in the circumstances to be presented at the time of rejection. As the RAD notes, the Applicants already provided copies of the Principal Applicant's father's declaration and medical report related to the Principal Applicant's alleged kidnapping to the RPD. The exception to permit new evidence before the RAD is not an opportunity for the Applicants to "correct" information that it previously submitted to the RPD in an effort to address issues identified by the RPD. As cited by the RAD, this Court has reiterated that a "RAD appeal is not a second chance to submit evidence to answer weaknesses identified by the RPD:" *Eshetie v Canada (Citizenship and Immigration)*, 2019 FC 1036 at para 33, citing *Abdullahi v Canada (Citizenship and Immigration)*, 2016 FC 260 [*Abdullahi*] at para 15:

> In other words, responding to an inadequacy identified by the RPD in a party's case cannot be a legitimate foundation for the party to claim that had she known about the deficiency she could have presented better evidence that was always in existence from persons that could have been called, in this case from her cousin. This would make the RPD process a monumental waste of time, which is surely not Parliament's intention in providing appeal rights.

[52] As noted by the Court in *Abdullahi*, applicants are required to put their best foot forward to the RPD. The Applicants could and should have provided the documents at issue to the RPD. I note that the initial documents—the father's original declaration and the first medical report—were dated November 2, 2020 and November 21, 2020, respectively. This is approximately two

years before the RPD hearing was held on November 21, 2022. The Applicants had ample time to update the submitted disclosure, especially considering the evidence concerned events that took place some four years prior to the RPD hearing. While the Applicants claim they were unaware of the concerns relating to the father's letter and medical report prior to the RPD hearing, I am not persuaded as the Principal Applicant testified that he requested his father write him a declaration and could have ensured the relevant details were included. Further, if the Principal Applicant knew the date on the medical report was incorrect, and that it contained other deficiencies, he could have sought to have it corrected prior to submitting it to the RPD. I find the RAD reasonably exercised its discretion to reject this "updated" evidence on appeal.

VIII. Conclusion

[53] For the foregoing reasons, I dismiss this application for judicial review. The RAD did not breach procedural fairness and the Decision, including the RAD's reasons for rejecting the Applicants' new evidence, is reasonable.

[54] The parties raised no question for certification and I agree none arises.

JUDGMENT in IMM-4847-23

THIS COURT'S JUDGMENT is that this application is dismissed and no question is certified.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4847-23
STYLE OF CAUSE:	ANDRES SORIANO JIMENEZ, ALEJANDRA GARCIA MEJIA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	MARCH 6, 2024
JUDGMENT AND REASONS:	ZINN J.
DATED:	MARCH 11, 2024

APPEARANCES:

Sumeya Mulla	FOR THE APPLICANTS
Aleksandra Lipska	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Waldman & Associates Barristers and Solicitors Toronto, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT