

Federal Court



Cour fédérale

Date: 20240613

Docket: IMM-4532-23

Citation: 2024 FC 879

Ottawa, Ontario, June 13, 2024

PRESENT: Madam Justice Azmudeh

BETWEEN:

**DIANA KAREN ZARATE LOPEZ
LUIS DANIEL VEDE ELIZARRARAS
NAHOMY VEDE ZARATE
AYLIN VEDE ZARATE**

Applicants

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, Diana Karen Zarate Lopez [the “PA”], Luis Daniel Vede Elizarraras, Nahomy Vede Zarate and Aylin Vede Zarate [together, the “Applicants”], have applied to this Court under s. 72(1) of the *Immigration and Refugee Protection Act* [IRPA] to judicially review the decision of the Refugee Appeal Division [“RAD”] upholding the rejection of their refugee

claim by the Refugee Protection Division [“RPD”] of the Immigration and Refugee Board [“IRB”].

[2] The Applicants are citizens of Mexico and they fear a personal risk of harm under section 97(1) of *IRPA* by the Jalisco New Generation Cartel (“CJNG” or the “Cartel”).

[3] The RPD heard the claim on August 12, 2022 and rejected it on credibility. The RAD largely upheld the RPD credibility findings and dismissed the appeal. The Applicants are now judicially reviewing the decision of the RAD.

II. Issues and Standard of Review

[4] In their memorandum, the Applicants had challenged both the reasonableness of the RAD decision and whether it was reached in a procedurally fair manner. However, in the hearing, the Applicants largely focused on the reasonableness of the decision, which is also the basis of my reasons.

[5] The standard of review applicable to refugee determination decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at para 23 [*Vavilov*]; *Singh v Canada (Citizenship and Immigration)*, 2022 FC 1645 at para 13; *Shah v Canada (Citizenship and Immigration)*, 2022 FC 1741 at para 15). A reasonable decision 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 reviewing court must ensure that the decision is justifiable, intelligible, and transparent

(*Vavilov* at para 95). Justifiable and transparent decisions account for central issues and concerns raised in the parties' submissions to the decision maker (*Vavilov* at para 127).

III. Analysis

A. *Legal Framework: Credibility Findings*

[6] There is generally a great degree of deference given to the credibility findings of an expert administrative tribunal. Generally, this Court will not interfere with a decision if the evidence before the Board, taken as a whole, would support its negative assessment of credibility, if its findings were reasonable in light of the evidence, and if reasonable inferences were drawn from that evidence (*Tsigehana v Canada (Citizenship and Immigration)*, 2020 FC 426, at paras 33-35).

[7] However, credibility assessment is a fact-finding exercise. The decision-maker can accept or reject the facts on a balance of probabilities. Facts that the decision-maker accepts or rejects are then linked to their rationally connected legal consequence. If the claimant's testimony cannot be relied upon, and there is no independent evidence to corroborate the facts relevant to the claim, the decision-maker is left with insufficient credible evidence to find that the fact is established to support the claim. Therefore, the starting point is to understand and consistently use well-defined concepts such as credibility, probative value, relevance, materiality, weight and sufficiency. My colleague Justice Grammond has offered guidance on this in *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 that I will not repeat here. Concisely, by understanding and using concepts related to accepting or rejecting evidence consistently, administrative decision-makers increase the likelihood of rendering reasonable decisions.

[8] When the decision-maker accepts certain material facts while they reject some others, it is important for the analysis to engage with both to explain how the evidence was weighed to support the ultimate conclusion.

[9] The formal rules of evidence, which make irrelevant or immaterial evidence inadmissible to a court proceeding, do not apply to an administrative tribunal such as the IRB. However, this does not mean that all facts, irrespective of their relevance, probative value or materiality, are created equal. Even though nearly all evidence is admitted at the RPD, and that new evidence before the RAD is subject to the restrictions in section 110(4) of the IRPA, relevance and materiality remain key to the weight of the evidence. Therefore, generally speaking, an exercise in making credibility assessment of individual facts, irrespective of how they matter in the context of the refugee case, in and of itself may not support an overall reasonable decision. This is because a decision where the member refers to all facts as equal, irrespective of their relevance and materiality in the context of the refugee claim, could lose the logical chain of reasoning contemplated by *Vavilov*:

[85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a **whole is reasonable**. As we will explain in greater detail below, a reasonable decision 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. The reasonableness standard requires that a reviewing court defer to such a decision.

(My emphasis)

[10] Putting it differently, likening the situation to puzzle pieces, individual credibility findings represent fragments of evidence. Each piece might be accurate on its own, but without assembling and examining the complete puzzle, the overall picture – the comprehensive

credibility assessment – may fail to reflect the true nature of the case. It underscores the necessity of a holistic approach to ensure the integrity and accuracy of the decision-making process. Without it, the chain of reasoning is lost and the reasons are no longer intelligible (*Patel v Canada (MCI)*, 2024 FC 28 [*Patel*] at para 24).

B. *Was the RAD decision reasonable?*

At the first glance, the RAD appears to focus on material evidence and the decision appears to be reasonable. However, on further scrutiny, it becomes clear that in reaching its decision, the RAD misapprehended or misconstrued the material evidence that resulted in a break in the chain of reasoning between the actual material evidence and the reasons. Most importantly, the RAD member failed to independently engage with the bigger picture, the Cartel’s direct interest in the Applicants, which was the crux of their allegations.

C. *The Applicants’ allegation of direct dealing with the Cartel: Kidnapping*

[11] A significant evidence on the Applicants’ allegation of the Cartel direct interest in them was that they were kidnapped. While the RPD had rejected this allegation because the Applicants had not reported it to the authorities, the RAD found that the RPD erred: “As a result, I do not find the credibility of the Appellants to be further undermined by their failure to report the alleged kidnappings to the various authorities”

[12] Credibility assessment is a fact-finding exercise and not a general pronouncement on a claimant’s character. It appears that the RAD member accepted that the Applicants were kidnapped but offered no analysis of how this evidence was relevant to the Cartel’s interest in the

Applicants. This evidence is not given any particular weight and the member does not engage with it.

[13] The kidnapping allegation is material as the Applicants speak to what they believe was a direct act of violence by the Cartel. The member accepted it. In not knowing whether the member found this to be significant and how it would fit in the bigger picture, the chain of reasoning is lost. Nor does the RAD weigh the kidnapping against the facts it ultimately rejected to dismiss the appeal.

Direct interest: Forward-looking risk

[14] To substantiate a forward-looking risk, in advance of the RPD hearing, the Applicants had amended their Basis of Claim (BOC) forms and had provided a letter from the PA's grandmother who indicated the Cartel representative visited their house on three occasions in 2021 and 2022. The RPD member rejected the credibility of this evidence largely because they were not provided earlier and was expecting to see further corroboration from the parents. The member did analyse why the evidence was given no weight or how early they would have been reasonably expected. The evidence was on the events the Applicant had learnt since they had left Mexico and significantly after they had filed their BOC Forms in June 2020. The RAD fully agreed with the RPD in its reasons.

[15] The RPD Member's approach, as accepted by the RAD, puts the Applicants in a position where they wonder on what basis the RPD Member made these credibility findings or that the RAD followed suit. For example, what was it about the evidence of the Cartel's ongoing visits that the RPD Member found vague or contradictory? Other than summarizing it, the RAD does

not offer much analysis either. As this Court has found in *Kamalanathan v Canada (Citizenship and Immigration)*, 2023 FC 44 at para 14, “this reasoning is not transparent or justified as is required and therefore the RPD’s decision is unreasonable (Vavilov at para 95).”

Direct Interest: the Applicants return to their home from Veracruz

[16] The Applicants allege that after they had relocated to Veracruz, they believed the Cartel had located them, so they returned home for the PA to give birth to her daughter. The RAD found that this further undermined their credibility because it was not consistent with their alleged fear of the Cartel and that it undermined their credibility generally.

[17] Again, while the RAD made the pronouncement on credibility, it never engaged with how much weight, as compared to the other factors, including the objective country documents on the reach and motivation of the Cartel, this fact should be given. Further, the RAD’s logic for making this finding was that their return to their home would not make sense because it would expose them to most risk. The RPD had rejected the fact that the Cartel had located the Applicants in Veracruz, largely because the uncle, whose house the Applicants were using, had not corroborated it with further evidence. The RAD agreed. It is unclear as to why the fact was rejected, not for any material omission or contradiction, but only for a lack of corroboration.

[18] I am mindful that the onus is on refugee claimants to establish their claim. This is also reflected in Rule 11 of the Refugee Protection Rules, SOR/2112-256. However, there is no general requirement for a claimant to provide corroborating documents for every alleged fact or risk it being rejected. This absence of a general requirement for corroboration is a corollary of the presumption of truthfulness set out in *Maldonado v Minister of Employment and*

Immigration, 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (*Maldonado*). Requiring corroboration in the absence of a pre-existing “reason to doubt” would effectively reverse the presumption.

[19] This Court has repeatedly found that it is an error to make an adverse credibility finding solely on the basis of absence of corroborative evidence, in part because results in a veiled finding of implausibility in circumstances that are not of clearest of cases (*Luo v. Canada (Citizenship and Immigration)*, 2019 FC 823, at paras 18-23). This Court has also explained in *Khamdamov v. Canada (Citizenship and Immigration)*, 2016 FC 1148, at para 16 how consideration of the absence of corroboration as the reason for doubting the credibility of a claim can result in a circular analysis:

By applying the decision in *Maldonado*, in order for the RAD to require corroborative evidence from the Applicant to substantiate the Applicant's claim, it was first necessary for the RAD to find reasons to doubt the truthfulness of the Applicant's sworn testimony. I find that the cardinal error in the RAD's decision is the failure to follow this straight-forward point of law. Instead of clearly identifying an evidentiary reason to rebut the presumption that the Applicant was telling the truth in the giving of his evidence, the RAD engaged corroboration in an erroneous circular analysis. That is, the fact that the Applicant did not file corroborating documentary evidence in support of his claim was found by the RAD as a reason to disbelieve his sworn evidence, and, thus, upon disbelieving his sworn evidence, the Applicant was required to provide corroborating evidence to avoid the dismissal of his claim. I find that this error alone renders the RAD's decision unreasonable.

[20] Most importantly, it is the RAD's cumulative findings and lack of weighing the different evidence in the context of the totality of the evidence that make the decision unreasonable.

Indirect Interest by the Cartel: interest in the father

[21] I find that there is a break in the chain of reasoning by the RAD on the direct evidence, especially with respect to a material fact it accepted such as the kidnapping. The RAD also engaged in compartmentalized way of dealing with credibility as a checklist of individual factors and not in the context of how and why those factors mattered in the context of the totality of the evidence.

[22] The RAD also misapprehended some of the evidence on the indirect interest of the Cartel in the Applicants. I only provide one example to demonstrate this. This is because a number of key errors that have resulted in an unintelligible decision are enough to return it for redetermination.

[23] The RAD found that the Applicants' evidence on the potential connection of the father to the Cartel was contradictory and evolving.

[24] The RAD largely pronounced on the Applicants' credibility, when the Applicants were only responding to the RPD's invitation to speculate and they recounted the little they knew and what they believed. The RAD was not bound to agree with the Applicants' inferences or subjective beliefs, or to find them to be sufficient. However, in not clearly indicating what facts were accepted or rejected in the context of the Applicants' fear of the Cartel, the chain of reasoning was lost in the reasons.

[25] For example, at no time had the Applicants stated that the PA's father worked with the Cartel, even if the doctor conducting the psychological assessment had noted that "her father was forced to sell drugs". At the RPD hearing, the PA was not questioned on this statement or on her exchange with the doctor.

[26] While the PA had said she believed the Cartel had killed her father, she had been very consistent in saying that she did not believe he worked with them:

MEMBER: Was your father working for them?

PRINCIPAL CLAIMANT: Last time I talked to him, he told me that he had not accepted to talk -- to work for them.

MEMBER: Last time you spoke to him, he told you what, sorry, can you repeat?

PRINCIPAL CLAIMANT: Yeah. Last time I talked to him, he said he has not accepted -- accept to work with them.

MEMBER: Did he ever work for them?

PRINCIPAL CLAIMANT: I do not remember. I do not remember. I do not know. Like, when I was a little girl, I do not know, I think he was selling marijuana, but he dropped this after.

MEMBER: Was he selling marijuana in association to the cartel?

PRINCIPAL CLAIMANT: I was very, very young. I do not remember very well. I do not know, but now that I am an adult, I know that all the problems come from there.

MEMBER: Was your father associated with the cartel in any way?

PRINCIPAL CLAIMANT: No. No.

[27] While unequivocal about not knowing about the father's relationship to the Cartel, the RAD analyses the Cartel's relationship to the father under the heading "the evolving evidence in relation to the association of the Principle Appellant's father with the Cartel undermines the credibility of the Appellants". The RAD concludes that:

[23] In any event, I also note that in its response upon appeal, the Appellants' memorandum also does not address the key point raised by RPD: that the suspicious evolution of the Principal Appellant's evidence as to her father working with the Cartel

undermines the credibility of those allegations. On this point, I agree with the RPD, as the testimony of the Principal Appellant did indeed seem to evolve in the hearing from initially saying that she did not know if her father had worked with the cartel, though allowing that she thought he was selling marijuana, to later definitively saying that he was not associated with the Cartel. The Appellants have provided no explanation for this contradiction, and I find that the evolution of this evidence does undermine the credibility of the Appellants.

[24] I note that these findings with respect to the Principal Appellant's father are significant. In the telling of the Appellants, they were targeted by the Cartel for recruitment because of the Cartel's earlier association with the Principal Appellant's father. That these allegations have been significantly undermined goes to the heart of the Appellants' entire claim and is one factor that seriously undermines the credibility of both these allegations, and that of the Appellants generally.

[28] The RAD did not stop at not extending the presumption of truthfulness to the Applicants' inference on whether the Cartel had killed the father or to find that the Applicants had not established a connection between the father and the Cartel. Rather, the RAD allowed this skewed focus on one piece of evidence to take away from their duty to analyse its significance in the context of the bigger question of Applicants' allegation on the Cartel's interest in them.

[29] At no time is it clear from the reason whether the RAD gave more weight to a fact it rejected, such as connection with the father than to a fact it accepted, such as the kidnapping. This lack of analysis puts the Court in a position to speculate, which shows the reason's lack of transparency and intelligibility.

[30] Returning to the earlier puzzle analogy in *Patel* at para 24, just as in *Cabrera v Canada (Citizenship and Immigration)*, 2024 FC 342 at para 15, the member's approach appears to have been overly fixated on scrutinizing the individual piece of evidence without stepping back to

consider the broader context or the overarching narrative. This renders the decision unreasonable.

IV. Conclusions

[31] I find that the decision of the RAD was unreasonable. I therefore grant the judicial review.

[32] The parties did not propose a certified question and I agree that none arises.

JUDGMENT IN IMM-4532-23

THIS COURT'S JUDGMENT is that

1. The Judicial Review is granted. This matter is sent back to the RAD to be decided by a differently constituted panel.

2. There are no questions to be certified.

"Negar Azmudeh"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4532-23

STYLE OF CAUSE: DIANA KAREN ZARATE LOPEZ ET AL. V. MCI

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**REASONS FOR JUDGMENT
AND JUDGMENT:** AZMUDEH J.

DATED: JUNE 13, 2024

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