

Federal Court



Cour fédérale

Date: 20241011

Docket: IMM-5266-23

Citation: 2024 FC 1619

Ottawa, Ontario, October 11, 2024

PRESENT: Madam Justice Sadrehashemi

BETWEEN:

KAREN VANESSA RIOS PINEDA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Karen Rios Pineda, fled El Salvador and applied for refugee protection in Canada. The Refugee Protection Division [RPD] denied her claim, finding that her allegations were not credible. The RPD further found that her claim had “no credible basis.” A “no credible basis” finding under subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [IRPA] has significant consequences. It precludes Ms. Rios from appealing the RPD's decision to the Refugee Appeal Division [RAD] (IRPA, s 110(2)(c)).

[2] Ms. Rios challenges the merits of the RPD's dismissal and "no credible basis" finding on judicial review. Both parties agree, as do I, that I ought to review the RPD's decision on a reasonableness standard (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 12-13, 84). As I explain below, I am unable to follow the RPD's reasoning in its assessment of the police report. The decision is not transparent, intelligible or justified on a central issue and therefore must be overturned.

II. Background on the Decision under Review

[3] Ms. Rios is a citizen of El Salvador. Ms. Rios' refugee claim is rooted in her fear of a gang in El Salvador. She described how, on two occasions, gang members approached her and threatened violence if she did not accept their recruitment demand. After the second incident, Ms. Rios reported both incidents to the police. Approximately one month later, after there had been no follow-up with the police, Ms. Rios fled El Salvador and came to Canada. She made a refugee claim upon arrival.

[4] Credibility was the determinative issue for the RPD. The RPD found on a material issue, whether the second incident with the gang had occurred, Ms. Rios' testimony at the hearing was inconsistent with her narrative (Basis of Claim [BOC] form) and the police report. When the RPD asked Ms. Rios, in three different ways, about whether she had any further interactions with the gang after the first incident, she did not describe the second incident and instead claimed that

she had no further interactions with the gang. When the RPD raised the discrepancy between her oral testimony and the evidence in the record on this point, Ms. Rios explained she had forgotten but that there had been a second incident and then went on to describe it. The RPD did not find Ms. Rios' explanation resolved its credibility concern.

[5] Based on this inconsistency, the RPD “drew a strong negative inference against [Ms. Rios'] overall credibility” and found that she had not established “with credible and trustworthy evidence that she was ever approached by the [gang] at all”. The RPD found that the remaining evidence, namely, the police report and the objective country conditions on the situation facing returnees were insufficient to “ground a positive determination in this claim” and therefore found the claim had “no credible basis” under section 107(2) of IRPA.

III. Framework for “No Credible Basis” Finding

[6] At issue in this judicial review is the reasonableness of the RPD's finding that there was no credible and trustworthy evidence that could support granting a claim. Where the RPD determines that “there was no credible or trustworthy evidence on which it could have made a favourable decision” (my emphasis), subsection 107(2) of IRPA directs that it must state in its reasons that “there is no credible basis for the claim.”

[7] A “no credible basis” finding has serious consequences for a claimant. It bars a claimant from appealing the RPD's negative determination to the RAD (IRPA, s 110(2)(c)), which in turn deprives them of the right to a statutory stay of removal pending their appeal and judicial review

of the negative RAD decision (*Immigration and Refugee Protection Regulations*, SOR/2002-227, s 231(1) [IRPR]).

[8] The threshold for making a “no credible basis” finding is high (*Mahdi v Canada (Citizenship and Immigration)*, 2016 FC 218 at para 10); *Omaboe v Canada (Citizenship and Immigration)*, 2019 FC 1135 at para 18). The Federal Court of Appeal has cautioned that the RPD “should not routinely state that a claim has ‘no credible basis’ whenever it concludes that the claimant is not a credible witness” (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51). There is clear distinction between finding that a claim has not been established on a balance of probabilities and determining the claim has “no credible basis.”

[9] This Court has noted in several cases that a “no credible basis” determination cannot be based on “a summary of insufficiency and weighing of evidence pros and cons” (*Mohamed v Canada (Citizenship and Immigration)*, 2017 FC 598 at para 31; *Mahdi v Canada (Citizenship and Immigration)*, 2016 FC 218, at para 10; and *Boztas v Canada (Citizenship and Immigration)*, 2016 FC 139 at paras 11-12). If there is any credible and trustworthy evidence that could support granting the claim, it would be unreasonable for the RPD to find that there is “no credible basis” to the claim.

IV. RPD’s Evaluation of Police Report

[10] The police report is evidence that Ms. Rios attended the police station in El Salvador in April 2022 and reported two incidents, one that had occurred in September 2021 and one that

had occurred that same day. As acknowledged by the RPD, Ms. Rios' police report is consistent with her BOC narrative that sets out both incidents with the gang.

[11] While the RPD's decision is lengthy, its analysis of Ms. Rios' police report, a key corroborative document, is limited and raises a number of unanswered questions. Though the RPD did not explicitly make a finding that the report was inauthentic and in fact gave the report "little weight" and not "no weight", there are several comments in the decision that suggest that the RPD was questioning the authenticity of the report.

[12] The RPD finds the probative value of the police report is diminished by "widespread impunity, corruption and the ineffectiveness of police forces in El Salvador". There is no explanation as to how this factor -- problems in the police services in El Salvador -- impacts the probative value of the police report. Is the RPD implying that a false police report would have been easy to obtain, suggesting this supports the view that Ms. Rios has presented an inauthentic report? The reasoning is unclear.

[13] The RPD also finds "the fact that the claimant made a statement about the alleged April 2022 incident [the second incident] actually further undermines her credibility in my view because it is an additional reason why she should have recalled this event at her hearing." Does this mean that the RPD did not believe Ms. Rios reported the incident to the police because she would have remembered it at her hearing if she had actually reported it? Again, does that mean the RPD is making a finding that the report is fraudulent? The reasoning is unclear.

[14] It is unreasonable for the RPD to give the police report “little weight” and then make comments that suggest a questioning of the authenticity of the report. As this Court has cautioned a number of times, decision makers must make clear determinations about the authenticity of a document (*Oranye v Canada (Citizenship and Immigration)*, 2018 FC 390 at para 27 and *Osikoya v Canada (Citizenship and Immigration)*, 2018 FC 720 at para 53). The RPD’s concerns about the police report are not adequately explained to meet “the requisite standard of justification, transparency and intelligibility” (*Vavilov* at para 98).

[15] Ultimately, I find the RPD’s limited and unclear assessment of a key corroborative piece of evidence renders both its credibility assessment and “no credible basis” finding to be unreasonable.

JUDGMENT in IMM-5266-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed;
2. The RPD decision dated April 5, 2023 is set aside and sent back to be redetermined by a different decision-maker; and
3. No serious question of general importance is certified.

"Lobat Sadrehashemi"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5266-23

STYLE OF CAUSE: KAREN VANESSA RIOS PINEDA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 4, 2024

JUDGMENT AND REASONS: SADREHASHEMI J.

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