

Federal Court



Cour fédérale

**Date: 20110111**

**Docket: IMM-1714-10**

**Citation: 2011 FC 24**

**[UNREVISED CERTIFIED ENGLISH TRANSLATION]**

**Montréal, Quebec, January 11, 2011**

**PRESENT: The Honourable Mr. Justice de Montigny**

**BETWEEN:**

**ANGIE AYMED VARGAS FLORES  
KEVIN ALVAREZ**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR ORDER AND ORDER**

[1] This is an application for judicial review, filed by the principal applicant, Angie Aymed Vargas Flores (the applicant), a citizen of Peru, and her son Kevin Alvarez, an American citizen, under subsection 72(1) of the *Immigration and Refugee Protection Act* (IRPA). The applicants are challenging the decision rendered on March 9, 2010, by the Refugee Protection Division (RPD) of

the Immigration and Refugee Board that they are not Convention refugees or persons in need of protection, within the meaning of sections 96 and 97 of the IRPA.

[2] For the following reasons, the Court finds that this application must be dismissed. In this case, the RPD primarily based its decision on the principal applicant's lack of credibility and her counsel did not persuade me that the RPD had erred by finding numerous contradictions and inconsistencies in the applicant's testimony.

### **THE FACTS**

[3] The applicant alleges having begun a conjugal relationship when she was 16 years old with a Peruvian man who worked as a police officer. In 2001, they apparently lived together for four months. Shortly after their cohabitation began, the spouse apparently became violent toward the applicant, who had become aware of his addiction to alcohol, drugs and gambling.

[4] After leaving her first spouse, the applicant alleges that she met another man with whom she left Peru in 2002 while she was pregnant with her son. Once they arrived in the United States, they parted ways.

[5] The applicant says that she met a third spouse in early 2007. She submits that he threatened her life and that she complained to the police. The man was apparently arrested, but continued to threaten the applicant even while he was in custody.

[6] The applicant sought refuge in Canada with her son in 2006. The fear alleged by the son is entirely based on the mother's fear.

### **IMPUGNED DECISION**

[7] The RPD noted several contradictions between the applicant's testimony and her Personal Information Form (PIF). The RPD first pointed out that the applicant had stated in her PIF that she discovered that most of her first spouse's income came from sources other than his job as a police officer, whereas at the hearing, she initially testified that her spouse did not have any other source of income. When the applicant was confronted with this contradiction, she explained that she had been [TRANSLATION] "confused" and that it was only at the end of their cohabitation that she allegedly discovered suspicious things without being certain that her spouse was involved in the drug trade. The RPD did not accept this explanation.

[8] In her PIF, the applicant also noted that her first spouse abused her when he came home under the influence of drugs. However, at the hearing, she was much less categorical; when she was questioned as to whether he would come home under the influence of substances other than alcohol, she answered that she could not say because she did not know the effects of drugs. When confronted about this contradiction, she then added that friends had told her that her spouse used drugs. The panel did not accept this explanation.

[9] When questioned as to whether her former spouse had vices other than drug and alcohol use, the applicant answered no. However, she had stated in her PIF that her first spouse gambled. The

applicant tried to explain this inconsistency by saying that she had forgotten to mention it when she was questioned at the hearing. The RPD did not accept this explanation either.

[10] At the hearing, the applicant stated that her grandmother had told her in 2002 and in 2005 that her former spouse was still looking for her. However, this important information was not found in her PIF. Again, the RPD was of the view that such a discrepancy undermined her credibility.

[11] The panel noted another discrepancy between her testimony and her PIF, this time related to the number of times she had contacted the police. During the hearing, she said that she had gone to the police only once, although she wrote in her PIF that she had gone twice. When she was questioned about these two inconsistent accounts, she said that she did not remember what she had written in her PIF. The RPD refused to believe this explanation.

[12] In the applicant's statement at the point of entry, the applicant stated that she feared the person she had met in the United States and had sent to jail, but did not say anything about her former Peruvian spouse. However, in this same statement, she claimed that she feared returning to Peru and not to the United States. Therefore, the applicant could not have [TRANSLATION] "confused" the name of the former spouse in Peru with that of the one who lived in the United States as she claimed, since she understood that she had to identify the person she feared in Peru.

[13] Finally, there were several contradictions concerning the applicant's cohabitation with her agent of persecution. The applicant indicated during her interview at the port of entry that she had lived with her former spouse for one year, but testified that this relationship had lasted only 5 to

6 months. In addition, the applicant never indicated in her PIF where she allegedly cohabited with her former spouse and instead gave her grandmother's address under the pretext that she did not think it was necessary to give the address where she had cohabited with her former spouse since it was for a short time. Further, the applicant specified in her PIF that she had become the common-law partner of her agent of persecution on January 1, 2001, although according to her testimony, she met him only in March or April 2001.

[14] Given all these contradictions and inconsistencies, the RPD found that the applicant was not credible and, as a result, found that she was not a Convention refugee or a person in need of protection. As for her son, no evidence was provided regarding a fear of returning to the United States, his country of nationality.

## **ISSUE**

[15] The only issue raised in this application for judicial review is whether the RPD erred in finding that the applicant lacked credibility.

## **ANALYSIS**

[16] According to case law, there is no doubt that the findings of a panel with regard to a person's credibility must be assessed on the standard of reasonableness. Moreover, this standard was not called into question by the parties. Thus, the Court will only intervene if the panel's findings were made in a perverse or capricious manner or without regard to the evidence: *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339.

[17] The applicant noted in her memorandum that the RPD failed to consider panel's Guideline entitled "Women Refugee Claimants Fearing Gender-Related Persecution" in assessing the applicant's credibility. Counsel for the applicant argued that the applicant's emotional and psychological fragility and the domestic abuse she had suffered explained her evasive answers during the hearing and why her testimony was rife with contradictions.

[18] This argument was not raised during the hearing before this Court and, I think, for good reason. First, the RPD explicitly noted at paragraph 6 of its reasons that it took this guideline into consideration. Further, there was no evidence in the record to demonstrate that the panel lacked sensitivity to the applicant's situation.

[19] Second, the contradictions that were identified by the panel do not relate to the attacks the applicant allegedly suffered and might have involuntarily forgotten, but to the fact that her testimony was more detailed in writing than at the hearing. Moreover, the guideline did not prevent the panel from drawing negative inferences about the applicant's credibility from the contradictions between her past statements and her testimony during the hearing. As this Court noted in *Higbogun v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 445, at paragraphs 48-49:

[48] The Gender Guidelines are to be considered by the RPD in the context of a gender-based claim. However, the Guidelines are not binding on the RPD. The Guidelines state that a claimant must demonstrate that the harm feared is "sufficiently serious to amount to persecution."

[49] In this case, there was no psychological evidence of battered women's syndrome, rape trauma syndrome, or post-traumatic stress disorder. As such, the Guidelines were not applicable. Even where there has been evidence of rape trauma syndrome, the Court has

determined that the mere existence of the syndrome “does not excuse contradictions or omissions of serious incidents in a claimant’s previous statements.” See *Kim v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 1168, [2005] F.C.J. No. 1408, at paragraph 4.

[20] The RPD raised a number of contradictions and inconsistencies between the statements made by the applicant before the hearing and her testimony at the hearing. Every time she was confronted with the discrepancies between her different accounts, she would change her testimony in an attempt to adjust it so as to minimize the discrepancies between the stories she had told at different times. After examining her testimony in light of the entire record, the RPD found that the applicant was not credible. In doing so, the RPD did not act unreasonably, but made a finding of fact that is abundantly supported by the evidence in the record.

[21] The assessment of the credibility of a refugee claimant’s testimony is central to the RPD’s duties. After all, members of the RPD are in a much better position than the Court to assess the credibility of a witness and to draw the necessary inferences (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315 (F.C.A.); *Allinagogo v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 545).

[22] Thus, for the foregoing reasons, I am of the view that this application for judicial review should be dismissed. No question was submitted for certification and none arises.

**ORDER**

**THIS COURT ORDERS that** this application for judicial review be dismissed. No question is certified.

“Yves de Montigny”

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Judge

Certified true translation  
Catherine Jones, Translator



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-1714-10

**STYLE OF CAUSE:** ANGIE AYMED VARGAS FLORES ET AL.  
v. MCI.

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** January 10, 2011

**REASONS FOR ORDER  
AND ORDER:** de MONTIGNY J.

**DATED:** January 11, 2011

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Catherine Brisebois FOR THE RESPONDENT

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