

Federal Court



Cour fédérale

Date: 20110831

Docket: IMM-350-11

Citation: 2011 FC 1028

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Montréal, Quebec, August 31, 2011

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

**DOLORES ESTELA VIERA ALGUETA
MARIA GUADALUPE ROSADO ROMERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] An account loses its truthfulness if, each time it is told, it is not the same and, in some cases, is not even similar.

II. Judicial procedure

[2] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board dated December 20, 2010, that the applicants, who are both Mexican citizens, are not Convention refugees as defined in section 96 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), or persons in need of protection according to section 97 of the IRPA, on the ground that they lack credibility.

III. Facts

[3] Dolores Estela Viera Algueta, born on September 8, 1957, and Maria Guadalupe Rosado Romero, born on August 21, 1987, are both Mexican citizens. Ms. Rosado Romero bases her refugee claim on that of her aunt, Ms. Viera Algueta, the principal applicant, with whom she lived in the city of Veracruz, Mexico.

[4] Ms. Viera Algueta is alleging that she was a victim of death threats, extortion and other criminal acts by a man named Luis Noël Dominguez, an entrepreneur from Veracruz, and members of the “Los Zetas” organization.

[5] Ms. Viera Algueta purportedly belonged to an association of female entrepreneurs called “Compartamos”. This non-government association was apparently formed by Mother Teresa of Calcutta. It allegedly exists at a national level and its purpose is to loan money to women to help them start businesses. The principal applicant purportedly received money from this association on two occasions. The money loaned to Ms. Viera Algueta was apparently funded by Mr. Dominguez

and by anonymous donors. She testified that she reimbursed the full amount of these two loans, as set out in the written agreements at the time—she did not, however, keep the copies.

[6] Moreover, in February 2008, when the principal applicant allegedly went with Mr. Dominguez to where a meeting of “Compartamos” members was to be held, Mr. Dominguez was apparently attacked and 1,500,000 pesos were stolen from him (the RPD decision states 1,500 pesos, but this must be the RPD’s error; the applicant clearly stated 1,500,000 pesos in the Applicants’ Memorandum at paragraph 6). This money was purportedly part of the amount that he had loaned to “Compartamos” to give loans to the women in the association.

[7] The principal applicant allegedly recognized the thieves as people from the neighbourhood who are Los Zetas. However, she purportedly refused to testify against them or to identify them in the legal action that Mr. Dominguez wanted to take against them. From then on, the applicant apparently received threats, both from Mr. Dominguez, who purportedly told her that he would sue her for “fraud and for conspiring with the Los Zetas criminals”, which she was accused of in April 2008, and from the Los Zetas, who apparently wanted to prevent her from reporting them to the authorities. The applicant added that members of the Los Zetas allegedly demanded that she pay 350,000 pesos in exchange for which they would leave her, her husband and her niece alone.

[8] On April 1, 2008, the applicant apparently went to file a complaint with the public prosecutor in Veracruz. In her testimony at the hearing, the applicant initially stated that she went to the public prosecutor to report the threats received from Mr. Dominguez and the Los Zetas. She then changed this testimony to state that she reported only the threats that she had received from the

Los Zetas. The applicant also told the panel that, when she returned home after filing that report, some Los Zetas members “were waiting in front of my home, and they threatened to kill me and my niece”. In her memorandum, the principal applicant also stated that investigators required an amount of money to proceed with the investigation, money she did not have in her possession.

[9] The principal applicant allegedly received threats after her visit to the public prosecutor and then decided to leave the country. She allegedly went to hide at her neighbour’s home before leaving her country. She arrived in Canada with her niece on April 4, 2008, and claimed refugee protection at that time.

[10] Ms. Viera Algueta’s husband was purportedly attacked by members of the Los Zetas on April 20, 2008, after returning to their home in Veracruz. He passed away on January 6, 2009. The applicant also stated at the hearing that, in May 2008, her brothers and her sister moved to Tijuana, near the American border, to hide from the threats they had received from the Los Zetas group because of her. If they were to return to their country, the applicants fear revenge by Mr. Dominguez and by Los Zetas members.

[11] The principal applicant’s niece confirmed her aunt’s testimony.

IV. Decision under review

[12] The RPD found that the principal applicant was “on the whole, not a credible witness” and attached “no credibility to any of her allegations”. Consequently, it rejected the applicants’ refugee claim:

[21] The panel does not believe that the principal claimant had any problems whatsoever when she was in Mexico. Therefore, the panel does not believe that she received threats from Mr. Dominguez or from Los Zetas members, as she claims.

...

[92] As the panel noted above, the claimant gave the immigration officer a different response from the one that she gave the panel regarding the origin of her fear of returning to Mexico.

[93] However, it does not stop there. The claimant's statements also differ regarding the circumstances of the threats that she allegedly received. She gave different versions of these circumstances concerning the chronology and the nature of these threats when she was talking to the officer and when she was filling out her PIF.

V. Issue

[13] Are the applicants raising a serious ground on which the Court can rely to intervene in accordance with subsection 18.1(4) of the *Federal Courts Act*, R.S.C. 1985, c. F-7?

VI. Relevant statutory provisions

[14] The following provisions of the IRPA apply to this case:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut

themselves of the protection of each of those countries; or

se réclamer de la protection de chacun de ces pays;

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Person in need of protection

Personne à protéger

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or

(ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le

from that country,

sont généralement pas,

(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and

(iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

Person in need of protection

Personne à protéger

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

(2) A également qualité de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VII. Positions of the parties

[15] In support of their application for judicial review, the applicants cited *Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (CA), to the effect that there is a presumption that an applicant's sworn statement is true unless there is a valid reason to doubt it. The principal applicant submits that she properly explained her account and even provided evidence of what she said, namely, the exhibit that demonstrates that she had actually been accused of fraud and the report by the public prosecutor's investigator dated April 1, 2008 (Tribunal Record at pages 169 to 174). The panel therefore purportedly erred by failing to consider all of the testimonial evidence

and erred in law by systematically finding that the principal applicant's testimony was implausible without referring to evidence to support its assessment of the facts. The principal applicant also submitted the argument that she was not given the opportunity to properly express herself and explain her account at the point of entry in Canada, which would explain the discrepancies between her Personal Information Form (PIF) and the point of entry notes.

[16] The respondent claims that the panel's decision is well founded in fact and in law, that it is reasonable and that it contains no error that would warrant the intervention of the Court. According to the respondent, the RPD properly explained the numerous contradictions, omissions, discrepancies, inconsistencies and implausibilities in the testimonial and documentary evidence, namely, with respect to the identity of the persecutors and the facts on which the fear was based.

VIII. Standard of review

[17] It is well established in the case law that the standard of review applicable to credibility findings made by the panel is reasonableness (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 at paragraph 47; *Martin v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 664, at paragraph 11).

[18] This Court has recognized on many occasions that curial deference should be shown to the panel's findings because of the panel's expertise in such matters (*Aguebor v. Canada (Minister of Employment and Immigration)* (1993), 160 N.R. 315; *Olguin v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 193, at paragraph 4).

IX. Analysis

[19] The RPD found that the principal applicant's allegations were not credible. To come to this conclusion, the panel found numerous contradictions, omissions, discrepancies, inconsistencies and implausibilities in the testimonial and documentary evidence. The RPD noted, namely, that upon the applicants' arrival in Canada, the principal applicant gave the immigration officer statements that were different from those she gave in her PIF and during her testimony at the hearing regarding the identity of her persecutors and the facts on which her refugee claim is based (Decision at paragraph 27):

- a. Upon her arrival in Canada, the principal applicant told the immigration officer that she fears "the authorities" and "the public ministry" (Decision at paragraphs 25, 42 and 84). However, in her initial PIF, the principal applicant in no way stated that she fears the Mexican authorities or the public prosecutor, and indicated instead that she fears "Luis Noel Dominguez" and "some people" / some 'thieves' who had allegedly attacked Mr. Dominguez" (Decision at paragraphs 36 and 52);
- b. During her testimony at the hearing, the principal applicant stated, regarding her persecutors, that they were in fact [TRANSLATION] "members of Los Zetas". She also stated that she fears Mr. Dominguez because she refused to testify for him. The applicant failed to mention her fear of the Mexican authorities and/or the public prosecutor (Decision at paragraphs 30 and 44).
- c. After a thorough assessment of the notes taken by the immigration officer at the point of entry, the panel stated that these notes are lengthy and detailed (Decision at paragraph 96). The panel therefore did not believe that the omissions and

discrepancies arose from a lack of thoroughness on the part of the immigration officer, as the applicants claim.

[20] With respect to the discrepancies that exist between the immigration officer's notes at the point of entry, the applicant's testimony and the information in the PIF, the Court found that these discrepancies may be determinative in the credibility assessment:

[23] According to case law, inconsistencies between an applicant's statements at the port of entry and testimony about crucial elements of a claim are sufficient to taint his credibility: *Nsombo v. Canada (M.C.I.)*, IMM-5147-03; *Shahota v. Canada (M.C.I.)*, [2004] F.C.J. No. 1540, online: QL; *Neame v. Canada (M.C.I.)*, [2000] F.C.J. No. 378, online: QL.

(*Chen v. Canada (Minister of Citizenship and Immigration)*, 2005 FC 767, 148 A.C.W.S. (3d) 118; *Cienfuegos v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 1262.)

[21] The panel also noted several other discrepancies and implausibilities in the central points of the principal applicant's account, including:

- a. the principal applicant failed to tell the immigration officer, or indicate in her PIF, that she belonged to the "Compartamos" association, while at the hearing she stated that her problems started because the money was stolen (Decision at paragraph 39). The panel did not accept the applicant's explanation that she had failed to mention that she belonged to this association because it was not an organization that committed crimes (Decision at paragraph 31);
- b. The panel emphasized that the principal applicant had indicated that she was a victim of extortion only a few days before her hearing by making an addition to her PIF, and failed to mention it in her initial PIF or in her amended PIF despite the fact

that she had mentioned it to the immigration officer upon her arrival in Canada (Decision at paragraphs 88-89, 100);

- c. Moreover, the principal applicant allegedly stated several times during her testimony that she has no outstanding loans, which makes the version of the facts given to the immigration officer, that is, that she was accused of failing to reimburse a loan, implausible (Decision at paragraphs 44 and 63-64);
- d. With respect to the exhibits submitted by the applicants, the RPD gave little weight to this evidence, namely, regarding the fact that there was no follow-up to the principal applicant's failure to reply to the notice to appear (Decision at paragraphs 50 to 52 and 78 to 83).

[22] It is settled law that the Court may intervene only if the RPD's decision is found to be unreasonable because of the high level of deference owed to findings of fact made by a specialized tribunal. The assessment of an applicant's credibility is a question of fact to which the Court must give deference (*Blanquez v. Canada (Minister of Citizenship and Immigration)*, 2011 FC 566; *Serrato v. Canada (Minister of Citizenship and Immigration)*, 2009 FC 176, at paragraphs 15-16). In this case, the RPD gave a detailed explanation of why it did not find the applicants credible. The Court can therefore not allow the application for judicial review.

X. Conclusion

[23] Given the foregoing, the Court finds that the documents submitted by the applicants do not raise any serious grounds that would permit the Court to allow their application for judicial review. Consequently, the Court dismisses the application.

JUDGMENT

THE COURT DISMISSES the applicants' application for judicial review. No question for certification arises.

“Michel M.J. Shore”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-350-11

STYLE OF CAUSE: DOLORES ESTELA VIERA ALGUETA
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v.
THE MINISTER OF CITIZENSHIP AND
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PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 31, 2011

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AND JUDGMENT:** SHORE J.

DATED: August 31, 2011

APPEARANCES:

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