

Federal Court



Cour fédérale

**Date: 20140617**

**Docket: IMM-6035-13**

**Citation: 2014 FC 572**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, June 17, 2014**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**LEONARDO DOMINGUEZ ROMO  
LEONARDO DOMINGUEZ GOMEZ  
ANDREA DOMINGUEZ GOMEZ  
VANESSA MONTSER GOMEZ GUTIERREZ**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

[1] This is an application for judicial review pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the Act) of a decision [the decision] rendered on August 30, 2013, by Patrick Lemieux, of the Refugee Protection Division of the Immigration and

Refugee Board of Canada (the panel), in which it was found that the applicants were neither Convention refugees nor “persons in need of protection” under sections 96 and 97 of the Act.

[2] For the reasons set out below, I am of the view that the application must be dismissed.

## I. FACTUAL BACKGROUND

[3] Vanessa Montserrat Gomez Gutierrez (the female applicant), her spouse and their two minor children (collectively, the applicants) are citizens of Mexico. They all base their claim on the female applicant’s narrative.

[4] According to the female applicant’s statements, she worked for the Mexican government in the Servicio de Administración Tributaria [tax administration service] (the SAT). In this capacity, she began in June 2009 an investigation of the activities of a company, “Incomersat”, which allegedly revealed fraudulent practices. In May 2010, near the end of the investigation, she was informed that a certain Jose Carlos Calleja Lopez (Calleja) would be joining her division. The female applicant submits that she knew Calleja as he had intervened in some of her investigative activities in 2007 and 2008 and she then concluded that he was linked with the criminal group the “Zetas”. For fear of working with Calleja, the female applicant resigned from the SAT in June 2010.

[5] On December 25, 2012, some two and a half years after her resignation, and when the female applicant worked for another organization, she allegedly received, at her home, a call from an unknown individual who identified himself as a member of the Zetas. Said individual

allegedly warned her to watch out for herself and her family because of the harm she could inflict on Calleja.

[6] The following day, on December 26, 2012, an individual allegedly stole the female applicant's camera and cellular telephone while strolling through downtown León with her son, at whom the man allegedly pointed a gun. The man then allegedly informed the female applicant that Calleja was demanding that she leave the country.

[7] On December 27, 2012, the female applicant filed a denunciation with the police. She then resigned from her work, took her children out of school and allegedly spent the next four months at home without leaving the house.

[8] On April 27, 2013, the female applicant left the house to go to the amusement park with her children. She was allegedly approached by a man who threatened to teach her a lesson for not leaving the country, as previously requested. She allegedly sprayed her assailant with pepper spray and managed to escape with her children.

[9] Furthermore, the female applicant purchased airline tickets for her and her family to Canada on April 22, 2013, that is, a few days before the incident at the amusement park, planning to travel on May 4 to reside permanently in Canada.

[10] On May 4, 2013, the female applicant and her family left Mexico for the United States, where they stayed for two weeks. They then travelled to Canada, where they made a claim for refugee protection about two months later.

## II. THE IMPUGNED DECISION

[11] After analyzing all the evidence presented by the applicants, the panel concluded that the female applicant's credibility was irremediably compromised on a number numbers of fronts. Having regard to all of the evidence, the panel stated that the applicants did not discharge their burden of proof.

[12] First, at the hearing, the female applicant testified that Calleja personally made veiled threats against her in June 2010. However, she made no mention of that threat, a key element, in any of her previous statements. The female applicant submits that [TRANSLATION] "Calleja wished to eliminate her because he believed she could incriminate him" and that this submission is partly based on the aforementioned threat of June 2010. However, although the female applicant amended her previous statements twice, she did not note such a threat and she confirmed under oath at the start of the hearing that her Basis of Claim Form (BOC Form) was complete. Only once confronted with this omission by the panel did the female applicant state that she thought she had mentioned it before. The panel found this explanation not to be credible and the likelihood of fear of reprisal by Calleja consequently reduced.

[13] The panel also found not credible the explanation provided by the female applicant to justify the two-and-a-half-year delay between the aforementioned threat of June 2010 and the telephone call from the member of the Zetas of December 25, 2012. The panel did not accept the female applicant's assertion that Calleja had begun to pay attention to her again because he was soon going to [TRANSLATION] "go before the courts". Indeed, the balance of probabilities

showed that no such trial had been scheduled to take place and the female applicant was unable to adequately explain why, if this allegation was well-founded, she had not yet been contacted by the authorities responsible for the proceedings involving Calleja or Incomersat. The panel rather found that the lack of expressed interest from Calleja in the female applicant during that period of over two years was inconsistent with the possibility of reprisal based on information held by the female applicant. The panel therefore found the female applicant's allegation that the threat of December 25, 2012, was in connection with Calleja or the Zetas to be implausible.

[14] The female applicant provided a recent notarized written statement of a member of her investigation team at the SAT specifically mandated to document any ties between Calleja and the Zetas. The panel found that the absence of any mention of Calleja, the Zetas, an ongoing investigation or the very existence of a problem in that statement spoke volumes. The panel was not satisfied with the explanations provided by the female applicant for her omission.

[15] As for the incident dated December 26, 2012, the panel did not find the female applicant's testimony to be credible. It was not until the very end of her account of the incident that the female applicant indicated that the individual who stole her cellular telephone and her camera referred to Calleja, and it was only at the panel's suggestion that she confirmed that said individual allegedly told her to leave the country. She could not initially remember what he had told her.

[16] In addition, the denunciation regarding that incident, dated December 27, 2012, does not contain any reference to words uttered by the assailant in connection with Calleja or threats

about leaving the country. Thus, having regard to all of the evidence presented, the panel concluded that the female applicant did not establish that the incident of December 26, 2012, was related to Calleja and the Zetas.

[17] The panel found that the circumstances relied on by the female applicant, the decision to tender her resignation, to take her children out of school and to remain at home during the months that followed the events of December 2012 were inconsistent with the alleged threats because the individuals she was hiding from knew where she lived. Indeed, they had contacted the female applicant by telephone at that location, and she also confirmed in her testimony that her telephone number and her address were published. The panel found that the explanations provided by the female applicant to justify her behaviour were unreasonable and concluded that she did not take precautions consistent with threats from Calleja or the Zetas.

[18] The panel found that the event of April 27, 2013, in the amusement park was improbable given the female applicant's allegations. Indeed, the panel concluded that the decision to go to the park was inconsistent with the existence of threats from Calleja and the Zetas and with the female applicant's stated fear, considering that this fear was so intense that she had already planned to leave the country permanently with her family one week later, after abandoning her job and electing to stay confined to her home for four months.

[19] In light of the foregoing, the panel concluded that the female applicant did not establish her principal allegations in a credible manner and on a balance of probabilities. It gave no probative weight to the other evidence from the female applicant to support the principal

allegation that Calleja or the Zetas sought or are still seeking to eliminate the female applicant or the other applicants. It did not, therefore, consider it necessary to elaborate further on other evidence.

[20] In light of these findings, the panel also considered to be unfounded the argument made by the female applicant at the hearing that Calleja is today aware of her presence in Canada owing to the steps taken by the Immigration and Refugee Board (the Board) that led to the Response to Information Request – MEX104543.F: Information on a fraud case against the national government and the legal proceedings allegedly involving, among others, the Mexican company “Incomersa, S.A. de C.V.” and the criminal organization Los Zetas; information on the protection available to employees of the Servicio de Administración Tributaria who are allegedly being threatened for having investigated corruption or fraud cases (Response to Information Request) dated August 7, 2013.

[21] Thus, the panel found that the applicants did not establish the principal allegations regarding the past, current or future interest of Calleja or the Zetas to eliminate the female applicant or otherwise threaten or mistreat her, and that, accordingly, they did not establish (i) a serious possibility of persecution, (ii) a risk to their lives, or (iii) a risk of torture or cruel and unusual treatment or punishment.



### III. ISSUE AND STANDARD OF REVIEW

[22] The issue raised in the present application is as follows:

Were the panel's negative findings with respect to the applicants' credibility made in a perverse or capricious manner without regard for the material before it?

[23] It is well established that the applicable standard of review concerning credibility issues is reasonableness (*Hidalgo Carranza v Canada (Minister of Citizenship and Immigration)*, 2010 FC 914, at paragraph 16; *Dunsmuir v New Brunswick*, 2008 SCC 9 (*Dunsmuir*); *Wa Kabongo v Canada (Minister of Citizenship and Immigration)*, 2008 FC 348, at paragraph 7. Indeed, the case law teaches that the panel is in a better position than this Court to assess a claimant's credibility and to determine the merits of his or her explanations (*Berber v Canada (Minister of Citizenship and Immigration)*, 2012 FC 497, at paragraph 31; *Cortes v Canada (Minister of Citizenship and Immigration)*, 2009 FC 583). The Court must defer when confronted with the panel's determinations and intervene only if the panel based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (*Aguebor*), at paragraph 4; *Dunsmuir*, at paragraph 47).

### IV. RELEVANT PROVISIONS

[24] Sections 96 and 97 of the Act read as follows:

REFUGEE PROTECTION, CONVENTION REFUGEES	NOTIONS D'ASILE, DE RÉFUGIÉ ET DE
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AND PERSONS IN NEED OF PROTECTION PERSONNE À PROTÉGER

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 themselves of the protection of each of those countries; or

(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.

Person in need of protection

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

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

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 se réclamer de la protection de chacun de ces pays;

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.

Personne à protéger

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) 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;

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| <p>(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if</p> <p>(i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,</p> <p>(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 from that country,</p> <p>(iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and</p> <p>(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.</p> | <p>b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :</p> <p>(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,</p> <p>(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 sont généralement pas,</p> <p>(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,</p> <p>(iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.</p> |
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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.

V. FEMALE APPLICANT'S SUBMISSIONS

[25] According to the female applicant, the panel erred in its assessment of the credibility of her testimony. The female applicant essentially objects to the assessment of various facts by the panel and submits that it made a number of errors.

[26] She first submits that the Response to Information Request was only disclosed to her on August 7, 2013, that is, the day before the hearing before the panel, therefore outside the limitation period. Thus, according to the female applicant, the analysis of that Response to Information Request during the hearing was [TRANSLATION] “unlawful” and constitutes a procedural error. She also disputes the respondent’s statement that said document constitutes evidence undermining the female applicant’s credibility. In addition, the female applicant submits that the mere fact that the Board requested an investigation into possible legal proceedings against Cajella and the Zetas means that the female applicant’s life and the lives of her family members are now even more at risk than before.

[27] The panel noted that although the female applicant testified at the hearing that Calleja personally made veiled threats against her in June 2010 when she left the SAT, she had up until that point failed to disclose that threat in her previous statements. The female applicant rather submits that a reading of the explanations provided to Question 2(a) of her BOC Form leads to the conclusion that she implicitly mentioned in her previous statements that her life was in danger.

[28] She then submits that the panel erred in considering as one single proceeding two distinct types of proceedings, i.e., one administrative and the other judicial. Thus, the female applicant claims that the two-and-a-half-year delay was reasonable, as it was attributable to the time required for administrative proceedings and subsequently for the prosecution of the case. It therefore follows that the panel’s conclusion that it “considers implausible the female claimant’s allegation that on December 25, 2012, after two and a half years of silence, she was threatened

by Las Zetas in connection with Calleja” does not take into account the time required for these two separate proceedings, which, according to the female applicant, is unreasonable.

[29] As for the recent notarized written statement of a member of her investigation team specifically mandated to document any ties between Calleja and the Zetas, she submits that the document was evidence of her good behaviour, and not a statement about facts regarding the investigation of Incomersat and the Zetas. Consequently, she submits that the passage which states that “the absence of any mention of Calleja, Las Zetas, an ongoing investigation or even the existence of a problem in this respect . . . speaks volumes, and the panel is not satisfied with the female claimant’s numerous attempts to explain this silence” is incorrect. The female applicant submits that she specifically stated at the hearing that it was a statement that they worked together and, therefore, the conclusion of the panel was not reasonable.

[30] The female applicant submits that the panel undermined her credibility with respect to errors that were superficial and insufficient to cast doubt on her statements about the circumstances surrounding the incident of December 26, 2012.

[31] Regarding the denunciation of December 27, 2012, that did not report the statements in question of the individual who stole her cellular phone and her camera, the female applicant submits that the panel erred by not accepting her explanations that the public ministry officer refused to record some elements of the complainant’s statement when, according to her, her explanations were more than reasonable, i.e., that the officer only recorded what was

pertinent, that is, that it was a theft. The other facts mentioned were totally irrelevant.

[32] The female applicant submits that the panel did not take into account the country's context relating to male-female relations. Essentially, she submits that she wished to leave the house more quickly but that, for his part, her husband wanted to stay, believing that the situation would calm down. She had to respect his decision.

[33] Finally, with respect to the decision to go to the amusement park with her children after electing to stay confined to the house for four months, the female applicant submits that she had no choice, despite the risk. She submits that the panel's assessment of her motivation as a desperate mother was defective.

## VI. RESPONDENT'S SUBMISSIONS

[34] Essentially, the respondent relies on the panel's findings.

[35] The respondent submits that the panel's decision is reasonable, that is, that the findings of credibility are reasonable. The respondent is also of the view that the deficiencies contained in each of the essential aspects of the narrative as alleged by the female applicant justify the finding of a lack of credibility reached by the panel. Thus, the panel was justified in concluding that the female applicant did not discharge her burden of proof of establishing the merits of her allegations, having been unable to "establish [her] claims on a balance of probabilities" (*Daissala v Canada (Minister of Citizenship and Immigration)*, 2005 FC 324, at paragraph 14).

[36] With respect to the assessment of the female applicant's credibility and relying on *Zeferino v Canada (Minister of Citizenship and Immigration)*, 2011 FC 456, at paragraphs 31-32, the respondent submits that the panel may take into account the female applicant's failure to mention in her BOC Form the threat Calleja personally made against her at the time she resigned from Incomersat in June 2010:

This Court has confirmed on a number of occasions that all the important facts of a claim must appear in the PIF and that failing to mention them could affect the credibility of part or all of the testimony. Furthermore, the RPD is entitled to review the contents of the PIF before and after its amendment and may draw negative inferences about credibility if matters it considers important were added to the PIF by an amendment later (*Taheri v. Canada (Minister of Citizenship and Immigration)*, 2001 FCT 886, [2001] F.C.J. No. 1252, at paragraphs 4 and 6; *Grinevich v. Canada (Minister of Citizenship and Immigration)*, (1997) 70 A.C.W.S. (3d) 1059, [1997] F.C.J. No. 444).

It was open to the panel to gauge the principal applicant's credibility and to draw negative inferences about the disparities between her statements in the original PIF, in the interview notes, in the amended narrative of the PIF and in the *viva voce* testimony, for which the principal applicant provided no satisfactory, plausible or credible explanation in the circumstances (*He v. Canada (Minister of Employment and Immigration)*, (1994), 49 A.C.W.S. (3d) 562, [1994] F.C.J. No. 1107). In this case, and the Court agrees with counsel for the respondent, the evidence shows that the applicants' story and narrative changed over the last two years.

[37] The panel also had just cause to rely on rationality and common sense to assess the plausibility of the alleged story, which allowed it to first find implausible that the female applicant was harassed by Calleja two and a half years after resigning from her position at the SAT and when no trial was in sight, and second, that the Zetas attempted to kidnap her with her children in a public place when if such a kidnapping had truly been their objective, they could

have executed it while the female applicant and her children were living in hiding in their home, whose location was known to the Zetas.

[38] Consequently, the defendant submits that the panel's decision falls "within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at paragraph 47).

## VII. ANALYSIS

[39] The proceeding before this Court is an application for judicial review. As indicated in *Ortez Villalta v Canada (Minister of Citizenship and Immigration)*, 2010 FC 1126, at paragraph 3, in the context of the panel's assessment of credibility, the Court must show considerable deference and analyze the decision according to the standard of reasonableness.

[40] In the circumstances, it is not this Court's function to substitute its own assessment of the facts for that made by the panel. Indeed, "[t]he administrative tribunal . . . has had the opportunity of hearing the testimony *viva voce* and is thus in a much better position to assess the credibility of witnesses. The role of this Court is to ascertain that the Panel has carried out its mandate in accordance with the legal framework set out by its constitutive legislation and with due regard to the rules of fairness and of fundamental justice" (*Utrera v Canada (Minister of Citizenship and Immigration)*, 2010 FC 360, at paragraph 13).

[41] In light of the facts, after reviewing the evidence in the record and after having heard counsel for the parties with respect to the issue raised in this case, namely, the assessment of the



facts by the panel, the Court is satisfied that the inferences drawn by the panel could reasonably have been drawn (*Aguebor*, at paragraph 4). The implausibility and inconsistencies noted by the panel are generally well-supported by the evidence.

[42] The panel's reasoning allows the Court to conclude that the panel considered the parties' submissions and all of the evidence presented before it, both the documentary and testimonial evidence, of approximately five hours' duration. Thus, because the panel had the benefit of hearing and assessing the scope of the testimonies, the Court finds that the decision reached by the panel fits within the range of decisions it was reasonable for the panel to reach.

[43] There was no error warranting the intervention of this Court.

**JUDGMENT**

**THE COURT ORDERS that:**

1. The application for judicial review is dismissed;
2. The parties did not propose any question of general importance to be certified and none is certified.

“Martine St-Louis”

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Judge

Certified true translation  
Daniela Guglietta, Translator

dd

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

**DOCKET:** IMM-6035-13

**STYLE OF CAUSE:** LEONARDO DOMINGUEZ ROMO, LEONARDO DOMINGUEZ GOMEZ, ANDREA DOMININGUEZ GOMEZ, VANESSA MONTSER GOMEZ GUTIERREZ v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

**DATE OF HEARING:** MAY 28, 2014

**REASONS FOR JUDGMENT AND JUDGMENT:** ST-LOUIS J.

**DATED:** JUNE 17, 2014

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