

Federal Court



Cour fédérale

Date: 20190115

Docket: IMM-136-18

Citation: 2019 FC 49

Ottawa, Ontario, January 15, 2019

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

LEYDIS LAURA JARENO GONZALEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant is a 27-year-old citizen of Cuba who entered Canada from the United States on October 16, 2015 and made her claim for refugee protection at the port of entry. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] rejected her claim in a decision dated November 17, 2017, with credibility being the determinative issue.

[2] The Applicant has now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [IRPA], for judicial review of the RPD's decision. She asks the Court to quash the RPD's decision and return the matter for redetermination by another member of the RPD.

I. Background

[3] In 2012, the Applicant left Cuba with the intention of reaching Canada to live with her aunt in Ontario and to look for work. En route to Canada, she was detained in Mexico and deported back to Cuba. Upon her return to Cuba, she was informed it would take two years to get a new passport and 60 days to get a new ID card. The Applicant believes she was punished for having been deported back to Cuba.

[4] Aside from the delay in getting a new passport and a new ID card, the Applicant claimed she was unable to continue her university education, and that the authorities would terrorize her with threats of further restrictions. Her neighbours knew she was being targeted by the authorities, and they did not speak to her. She became depressed and was treated for depression.

[5] In 2014, the Applicant obtained a new passport. She applied for a visitor's visa to travel to Canada, but this application was rejected. She then travelled to Ecuador, trying again to come to Canada. She was able to enter the United States on December 13, 2014, under the *Cuban Adjustment Act* and lived with her partner in Texas.

[6] In 2015, the Applicant became pregnant. According to the Applicant, her partner was unable to support her, and he was not physically fit to help with a baby. The Applicant believed her family in Canada would be able to support her and her unborn child. She entered Canada on October 16, 2015 and made a claim for refugee protection. Although her partner tried to enter with her, he was refused entry to Canada. Subsequently, the Applicant gave birth to her daughter in February 2016, and she and her partner are no longer together as she is now in another relationship.

II. The RPD's Decision

[7] In a decision dated November 17, 2017, the RPD found the Applicant was neither a Convention refugee nor a person in need of protection, the determinative issue being credibility.

[8] After establishing the Applicant's identity, the RPD noted that she had entered the United States in December 2014 under the *Cuban Adjustment Act* and would have been able to apply for permanent residence in the United States in December 2015. In response to the RPD's question as to why she would give up protection in the United States and take a chance she might not be allowed to stay in Canada, the Applicant said she wanted to be near family as she was expecting a baby and her partner was not physically fit to help her with a baby. The RPD did not accept this explanation as reasonable. In the RPD's view, the Applicant coming to Canada in these circumstances was not consistent with a well-founded fear of returning to Cuba and facing serious harm. The RPD drew a negative inference regarding her credibility.

[9] The RPD noted that, while the Applicant stated she was intimidated by Cuban authorities who came to her house unexpectedly and threatened her, the last time being in August 2014, no dates of these visits were mentioned in her Basis of Claim [BOC] form. The RPD found this omission significant, leading it to draw a negative inference concerning her credibility. The RPD drew further negative inferences about the Applicant's credibility since she had not mentioned in her BOC form that she could not return to Cuba because she disagreed with the Cuban system, or that her daughter would suffer because of having a mother who was being targeted. In view of these credibility concerns, the RPD concluded that the Applicant had not been threatened by Cuban authorities.

[10] The RPD then proceeded to consider the Applicant's profile as someone who had not abided by Cuban laws concerning the length of time spent outside of Cuba. After reviewing the documentary evidence, the RPD found that failed asylum seekers were no longer universally punished upon their return to Cuba, and that if a failed asylum seeker was a good citizen before they left Cuba, very little if anything was done to them. The RPD further found that the Applicant had not established with enough credible evidence either that she was of concern to Cuban authorities, or that there was more than a mere possibility of being persecuted for her profile as someone who had remained outside of Cuba for a prolonged period.

[11] The RPD assigned little weight to the letters from the Applicant's mother and neighbour as there were serious credibility concerns with the Applicant's testimony, and her mother and neighbour had not been called as witnesses. It also gave little weight to a document the Applicant had provided to support her allegation that she would be unable to study in Cuba. The RPD noted

that, although this document had a seal, it was undated and not on a university letterhead; in the RPD's view, it would be reasonable to expect that if persons deported back to Cuba are being denied their education, that would have been reported in the media or in human rights reports.

III. Issues

[12] This application for judicial review raises one primary issue: was the RPD's decision, including its assessment of the Applicant's credibility, reasonable?

A. *Standard of Review*

[13] The RPD's assessment of the Applicant's credibility and the evidence as well as its decision overall is to be reviewed on a standard of reasonableness (*Cambara v Canada (Citizenship and Immigration)*, 2017 FC 1019 at para 13, 286 ACWS (3d) 531; *Aguebor v (Canada) Minister of Employment and Immigration*, [1993] FCJ No 732 at para 4, 160 NR 315 (FCA)).

[14] Accordingly, this Court should not intervene so long as the RPD's decision is transparent, justifiable, and intelligible, and within the range of possible, acceptable outcomes based on the law and the facts (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and*

Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708 [*Newfoundland Nurses*]).

B. *The Parties' Submissions*

(1) BOC Omissions

[15] In the Applicant's view, the omissions in her BOC form were not significant. According to the Applicant, it is well-known that overstaying outside of Cuba or trying to leave permanently is viewed by the government as anti-Cuban, and this was implied in her narrative. Although there were no dates connected to the incidents of harassment by the Cuban authorities, the Applicant says the letters from her mother and her neighbour stated she had received unannounced visits from the authorities at her home to harass her.

[16] The Respondent says the RPD reasonably found that the Applicant's failure to include dates for when the Cuban authorities allegedly came to her home in her BOC form undermined her allegations of being pursued. In the Respondent's view, it was reasonable for the RPD to determine that all the reasons for the Applicant's refugee claim would be included in the BOC. The Respondent notes that the BOC form clearly states that an applicant should include everything that is important for their claim and should include dates, names, and places whenever possible. According to the Respondent, the RPD may consider a refugee claimant's oral testimony not credible where the claimant fails to mention important facts in the BOC form and then later describes the events in oral testimony.

[17] In my view, it was reasonable for the RPD in this case to draw negative inferences about the Applicant's credibility because of several significant and material omissions in her BOC form. In my view, the RPD reasonably found that the Applicant's failure to include in her BOC form (i) dates when the Cuban authorities allegedly came to her home, (ii) her disagreement with the Cuban system, and (iii) that her daughter would suffer because of having a mother who was being targeted, undermined her credibility. The RPD's assessment of these omissions was neither microscopic nor hypercritical.

(2) Time in the United States

[18] In the Applicant's view, the RPD's approach to the Applicant's time in the United States did not consider the totality of the evidence. Although she was only a few months away from meeting the requirements to apply for permanent residency in the United States, the RPD's reasons failed to address that in 2015 there were talks between the United States and the Cuban governments, and many Cubans did not know if the parole program would end and they would be sent back to Cuba.

[19] In the Respondent's view, if the Applicant had a well-founded fear of persecution in Cuba, she would not have given up protection in the United States and take the chance of coming to Canada with the possibility of being removed back to Cuba. According to the Respondent, the RPD reasonably rejected the Applicant's explanation that her partner's limited ability to provide support to her and her child did not explain the risk associated with coming to Canada when she had to stay only a couple more months in the United States before being eligible for permanent residency there.

[20] In my view, it was reasonable for the RPD to find that the Applicant lacked a well-founded fear of returning to Cuba and facing serious harm. The RPD reasonably rejected the Applicant's explanation that her partner had a limited ability to provide support to her and her child because that did not explain the risk associated with coming to Canada and possibly being removed back to Cuba when she had to stay only a couple more months in the United States before being eligible for permanent residency there.

(3) The Applicant's Risk Profile

[21] The Applicant says the RPD did not appropriately assess her risk profile and it was unreasonable for it to find she would not be perceived as a dissident for being out of Cuba for over two years and returning as a failed asylum seeker. In the Applicant's view, the RPD cherry-picked information in a Response to Information Request [RIR] prepared by the IRB to conclude that individuals who have remained out of Cuba for two years or failed asylum seekers would not face persecution on return to Cuba.

[22] The Applicant notes that the RIR does not mention leniency and, instead, goes on to say that those who have stayed outside Cuba for more than two years lose their rights as citizens. The Applicant further says the finding that she did not have a political profile to be of concern to the Cuban authorities was unreasonable because the RIR makes no mention that failed asylum seekers must have a high political profile before facing persecution upon return to Cuba. In the Applicant's view, the RPD's finding in this regard was based on speculation and not supported by the evidence.

[23] The Respondent says it was reasonable for the RPD to reference and rely upon the RIR which states that: “What happens to failed asylum seekers in Cuba after they return depends upon what they did before they left [Cuba]. If they were good citizens before they left, very little if anything is done to them.” The Respondent defends the RPD’s finding that the Applicant had failed to establish with credible evidence that she was of any concern to Cuban authorities, noting that while it is accepted that political dissidents are targeted by Cuban authorities, the Applicant confirmed she does not belong to any political organization nor was she active in expressing her views publicly.

[24] I disagree with the Applicant that the RPD did not appropriately assess her risk profile. The RPD reasonably looked to the documentary evidence and noted the absence of evidence suggesting that the Applicant had expressed political views in the past, been a member of any political organizations, or engaged in any activities against the Cuban government. The RPD’s findings that the Applicant had not established she was of concern to Cuban authorities, and that there was no more than a mere possibility of being persecuted for her profile as someone who had remained outside of Cuba for a prolonged period, were reasonable.

(4) The RPD Ignored Evidence

[25] Although the Applicant recognizes that the RPD is not obligated to identify each piece of evidence in the reasons, she claims the RPD ignored key personal evidence, such as a Cuban psychological report dated October 28, 2015 recounting the 2012 treatment for acute depression and anxiety and a rejection letter from her local Committee for the Defence of the Revolution [CDR], to show that she had been targeted by the Cuban authorities and ostracized for her prior

attempt to defect from Cuba. In the Applicant's view, the CDR letter is clear that the CDR had rejected her.

[26] According to the Applicant, it was not reasonable for the supporting evidence to be found not credible by the RPD since its reasons bootstrapped on her unreliability. When combined with her testimony, the support letters from her mother and neighbour, as well as the objective evidence, the Applicant claims it is more likely than not she was known to the authorities and threatened by them.

[27] I disagree with the Applicant that the RPD ignored key personal evidence such as a psychiatric report about her anxiety and the CDR rejection letter.

[28] It is well-established that administrative decision-makers, including the RPD, do not have to reference every piece of evidence in their decisions. In *Newfoundland Nurses*, Justice Abella stated (at para 16) that a "decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion." Similarly, in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1425 at para 16, 157 FTR 35, Justice Evans stated that administrative agencies are not "required to refer to every piece of evidence that they received that is contrary to their finding, and to explain how they dealt with it" as it will often be sufficient simply to make a statement "in its reasons for decision that, in making its findings, it considered all the evidence before it."

[29] It is true that “where the evidence contradicts the RPD’s findings, more than a blanket statement will be required to demonstrate that the RPD considered the evidence” (see: *Eze v Canada (Citizenship and Immigration)*, 2016 FC 601 at para 22, 267 ACWS (3d) 681). In this case, though, no such demonstration is necessary. The psychiatric report and the CDR rejection letter do not contradict the RPD’s findings. The RPD explicitly stated that it had “considered all of the evidence” and it can be presumed that these documents were taken into consideration by the RPD.

IV. Conclusion

[30] The RPD’s reasons for rejecting the Applicant’s claim for refugee protection are intelligible, transparent, and justifiable, and its decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicant’s application for judicial review is therefore dismissed.

[31] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-136-18

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed,
and no serious question of general importance is certified.

"Keith M. Boswell"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-136-18

STYLE OF CAUSE: LEYDIS LAURA JARENO GONZALEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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