

Federal Court



Cour fédérale

Date: 20200428

Docket: IMM-5967-19

Citation: 2020 FC 562

Ottawa, Ontario, April 28, 2020

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

A.B.

Applicant

And

THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION

Respondent

**JUDGMENT AND REASONS**

I. Nature of the Matter

[1] This case is about the harshness, although at times justified, of a “no credible basis” finding pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] In a decision dated September 5, 2019, the Refugee Protection Division [RPD] rejected the Applicant's claim for protection under section 96 and subsection 97(1) of the IRPA. In doing so, it also made a "no credible basis" finding pursuant to subsection 107(2) of the IRPA.

[3] The result of that decision, of course, is that it precluded the Applicant from appealing to the Refugee Appeal Division [RAD] (paragraph 110(2)(c) of the IRPA; *Alyafi v Canada (Citizenship and Immigration)*, 2014 FC 952 at para 13), and thus denied the Applicant the benefit of an automatic stay of removal pending judicial review, absent a ministerial designation under subsection 109.1(1) of the IRPA (subsection 231(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227; *Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at para 9 [*Pournaminivas*]).

[4] For the reasons set out below, I will allow this application for judicial review, and return the matter to the RPD for reconsideration.

## II. Facts

[5] The Applicant is a citizen of Mexico and sought protection on account of her fear relating to a particular member of a drug cartel whom I will simply refer to as the "agent of persecution."

[6] The Applicant's mother, in fact, also fled Mexico in October 2011 and sought refugee protection in Canada based on acts of violence of which she was a victim between March 2009 and October 2011 committed by this same agent of persecution. The RPD accepted the mother's claim on October 2, 2013.

[7] From January 2013 until September 23, 2018, the Applicant lived in Mexico, but travelled to Canada on ten previous occasions in order to visit her mother. She would remain in Canada for various periods of time, but never beyond her six-month visitor's visa; she would always return to Mexico.

[8] When asked during her hearing before the RPD to explain why she would always return to Mexico if she were in fear of the agent of persecution, the Applicant stated that she did not feel at risk prior to 2014, but thereafter was continuously on the move; while in Mexico she moved around seeking to avoid the agent of persecution, and also travelled to Canada when she could and remained as long as possible under her visitor's visa. She also stated that she had her husband to think about, and could not leave him alone for very long at any one time.

[9] In addition, the Applicant gave evidence that she had applied for permanent resident status in Canada, and was, for some time, awaiting a decision in that respect—her application was eventually rejected in October 2017.

[10] The Applicant travelled to Canada on September 23, 2018, for the eleventh time. Her husband was already in Canada, having arrived in May 2018. He returned to Mexico in November 2018, and the couple separated.

[11] Five months following her arrival in Canada, on February 23, 2019, the Applicant filed for protection. In essence, the Applicant claimed a fear of the same agent of persecution who had victimized her mother.

[12] On August 1, 2019, the Applicant filed an amended narrative that included new allegations as to the risk to her life in Mexico.

[13] In particular, the Applicant stated that, on May 1, 2019, the then tenant of her home in Veracruz, which the Applicant had fled in 2017, sought termination of his lease following a series of threats he had received from individuals who were coming around and seeking information on the whereabouts of the Applicant and her husband [the Tenant Issue].

[14] It also appears that on July 7, 2019, the Applicant's cousin visited the Applicant's now-vacated home to ascertain the condition it was left in by the previous tenant, and noted graffiti death threats on one of the walls specifically targeting the Applicant by name. The Applicant submitted photographic evidence of the graffiti [the Graffiti Issue].

[15] In addition, on July 10, 2019, one of the Applicant's aunts filed a complaint with a local official after unknown individuals harassed her repeatedly for information on the whereabouts of the Applicant [the Harassment Complaint].

[16] The Applicant also claimed that she was receiving medical attention on account of her having been diagnosed with post-traumatic stress disorder [PTSD], and had filed medical and psychiatric evidence in support of her claim.

[17] The RPD hearing was held on August 12, 2019.

### III. Decision under Review

[18] On September 5, 2019, the RPD rejected the Applicant's claim, finding that the Applicant had failed to establish that there was a serious risk of persecution in Mexico. The determinative issue in the RPD decision was the Applicant's credibility.

[19] The RPD found that the Applicant reported having issues with the agent of persecution since 2011, yet returned to Mexico ten times from Canada since 2013, prior to filing her claim for refugee protection in Canada. The RPD concluded that, on the balance of probabilities, the ten return trips to Mexico constituted conduct by the Applicant that was incompatible with a fear of persecution, and which seriously undermined the Applicant's general credibility.

[20] As regards the Applicant's five-month delay in filing her refugee claim after she arrived for the last time in Canada, the RPD concluded that, on the balance of probabilities, the delay showed that the Applicant did not fear for her life, and further eroded her general credibility.

[21] As regards the Tenant Issue, the RPD simply did not believe that the events described in the Applicant's amended narrative had actually occurred.

[22] As regards the Graffiti Issue, the RPD gave no weight to evidence related to the graffiti death threat because the Applicant was unable to identify the author of the graffiti – a strange finding.

[23] As regards the Harassment Complaint, the RPD found that the document did not constitute a criminal complaint and apparently was not lodged before the appropriate police authorities. Accordingly, and on account of the lack of credibility of the Applicant, the RPD gave no weight to the complaint submitted by the Applicant's aunt.

[24] Finally, the RPD found that the medical evidence failed to provide a diagnosis supporting the Applicant's claim that she suffers from PTSD, and in any event, as the RPD simply did not believe the facts underlying the psychiatric evaluation, the RPD gave no weight to it.

#### IV. Issue

[25] I need only to address a single: was the RPD's "no credible basis" finding was reasonable?

#### V. Standard of Review

[26] That issue is reviewable on the standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). Under the reasonableness standard of review, "the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable" (*Vavilov* at para 83).

## VI. Discussion

[27] The determination that a claim has either “no credible basis” or is “manifestly unfounded” is specifically provided for in subsection 107(2) and section 107.1 of IRPA.

Subsection 107(2) reads as follows:

<b>No credible basis</b>	<b>Preuve</b>
(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.

[28] I accept that an efficient use of limited resources necessitates that claims which clearly have no prospect of success be weaned from the system at an early stage, and that subsection 107(2) of the IRPA reflects sound policy considerations.

[29] It also seems clear to me that subsection 107(2) of the IRPA contains a very subjective element, in that the determination of whether there exists any “credible or trustworthy evidence”, as set out in that subsection, is left to the opinion of RPD.

[30] That said, it is also clear that the bar is very high for the RPD to come to such a decision regarding any particular claim (*Rahaman v Canada (Minister of Citizenship and Immigration)*,

2002 FCA 89, [2002] 3 FC 537 at paras 19, 27-30, 51-52 [*Rahaman*]; *Mahdi v Canada (Citizenship and Immigration)*, 2016 FC 218 at para 10 [*Mahdi*]).

[31] In fact, a “no credible basis” finding is not linked to a reasonable “not credible” finding. This Court has concluded in the past that the RPD’s negative credibility findings were reasonable, but that a “no credible basis finding” was not (*Pournaminivas* at paras 5-10; *Mahdi* at para 13; *Mohamed v Canada (Citizenship and Immigration)*, 2017 FC 598 at para 36).

[32] Documents may, on their own, be insufficient to support a claim for protection, while, at the same time, provide some credible basis for a claim (*Djama v Canada (Minister of Citizenship and Immigration)*, 2019 FC 86 at para 17). As stated by Mr. Justice Rennie in *Ramón Levario v Canada (Citizenship and Immigration)*, 2012 FC 314 at paragraph 22 [*Ramón Levario*]:

The respondent argues (in its initial Memorandum) that the documentary evidence is not capable of supporting the applicant’s claim because it alone does not support a finding that it is more likely than not that the applicant faces a risk under section 97. However, this submission is at odds with the reasoning in *Singh* and conflates the standard under section 107(2) with the standard under section 97: while it may have been reasonably open to the Board to find, on a balance of probabilities, that the applicant would not be at risk because of his bisexuality, that does not mean that it could make a “no credible basis” finding in light of credible and trustworthy documentary evidence that persons in the applicant’s circumstances are at risk.

[Emphasis added.]

[33] In determining whether a subsection 107(2) finding is unreasonable, this Court has applied the test adopted in *Ramón Levario*:

[18] The threshold for a finding that there is no credible basis for the claim is a high one, as set out in *Rahaman*, at para 51:

[...] As I have attempted to demonstrate, subs. 69.1(9.1) requires the Board to examine all the evidence and to conclude that the claim has no credible basis only when there is no trustworthy or credible evidence that could support a recognition of the claim.

[19] Thus, if there is *any* credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities.

[34] Before me, the Applicant raises, as might have been expected, a broad range of other issues upon which, it is argued, the RPD erred in its credibility findings. For instance, the Applicant argues that the RPD improperly raised credibility concerns related to the elements of her claim – in particular, the RPD found that the Applicant’s credibility was undermined by the fact that she voluntarily returned to her country of citizenship on at least ten occasions following the events upon which she claimed a fear of persecution.

[35] In addition, the Applicant argues that the RPD neglected to properly assess the evidence on record – in particular medical reports addressing her psychological condition as well as a photograph showing a threatening graffiti specifically naming the Applicant – and further, committed a breach of procedural fairness when it relied on specialized knowledge in the form of an internet search to question the Applicant’s credibility pertaining to a supposed police complaint made by a relative of the Applicant in Mexico, without giving prior notice to the Applicant or providing an evidentiary basis of its specialized knowledge.

[36] The RPD found the Applicant not to be credible, however that alone is insufficient to support a “no credible basis” finding pursuant to subsection 107(2) (*Foyet v Canada (Minister of*

*Citizenship and Immigration*), [2000] FCJ No 1591, 2000 CanLII 16312 (FC) at paras 23-26; *Pournaminivas* at para 9) unless no evidence other than the testimony of the Applicant is submitted in support of the claim (*Chen v Canada (Citizenship and Immigration)*, 2015 FC 1133 at paras 17-18 [*Chen*]; *Rahaman* at para 51; *Boztas v Canada (Citizenship and Immigration)*, 2016 FC 139 at para 9).

[37] As was stated by Mr. Justice Zinn in *Chen* at paragraph 16:

[16] In *Sheikh v Canada (Minister of Employment & Immigration)*, 1990 CanLII 8017 (FCA), [1990] FCJ No 604 [*Sheikh*], the Court held that a finding of “no credible basis” is not the same as a finding that a claimant is not credible. However, if the only evidence before the RPD is the testimony of the claimant, then a general finding that he or she lacks credibility will amount to a finding that there is “no credible basis” for the claim. In *Rahaman v Canada (Minister of Citizenship & Immigration)*, 2002 FCA 89, as a corollary of the principle in *Sheikh*, the Court of Appeal held that if a claimant adduces independent and credible evidence that is capable of supporting a positive decision, then his or her claim will have a “credible basis” even if the claimant’s testimony is found not to be credible: See also *Gill v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 656 at para 14.

[17] Thus, while a “no credible basis” determination may flow automatically from a finding that the claimant is not credible where that is the only evidence offered to support the claim, the same is not the case when there is other evidence tendered. In those cases, as the Court held in *Levario v Canada (Minister of Citizenship & Immigration)*, 2012 FC 314 [*Levario*], the threshold for finding that there is no credible basis for a claim is a high one. “Thus, if there is any credible or trustworthy evidence that could support a positive determination the Board cannot find there is no credible basis for the claim, even if, ultimately, the Board finds that the claim has not been established on a balance of probabilities.”*Levario* at para 19.

[Emphasis in the original.]

[38] There was additional evidence that the RPD had to consider before making a finding pursuant to subsection 107(2) of the IRPA. However, I conclude that the RPD confused and conflated the test for determining whether evidence is credible with its finding that there was no credible basis for the claim (*Chen* at para 18; *Ramón Levario* at para 22), and simply failed to fully address the evidence, often assessing it for what it did not say rather than for what it did.

#### A. *Adverse credibility finding*

[39] Having read the transcript of the hearing, I find that the RPD simply misconstrued elements of the Applicant's testimony in arriving at an adverse credibility finding. As the RPD's negative credibility assessment permeates its findings as regards the remaining documentary evidence, it is important to address some of those issues.

[40] The RPD member stated in his decision that the Applicant was fearful of the agent of persecution since 2011 (coinciding with the experience of her mother), and emphasized that the ten return trips to Canada since then, and her systematic returns to Mexico, constituted conduct inconsistent with a person in fear. He stated at paragraph 12 of his decision:

[TRANSLATION] At the beginning of the hearing, the tribunal asked the claimant since when did she fear [the agent of persecution]: the claimant answered since 2011. Then, the claimant paused and added that she feared [the agent of persecution] since 2011, but that in March 2014 unknown persons who were probably working for [the agent of persecution] had succeeded in finding where she was working, that had made her more fearful.

[41] What the Applicant actually said, and what the RPD member failed to accurately record in his decision, was as follows:

[TRANSLATION]

BY THE MEMBER:

OK. I would like to know: since when did you fear [the agent of persecution], please?

BY THE CLAIMANT:

Since 2011. However, it was rather my fear, my psychological condition since [...] since the problems involving my mother. But as for myself, with the evidence, 2014. Since 2014.

BY THE MEMBER:

Since 2014?

BY THE CLAIMANT:

Yes.

BY THE MEMBER:

OK. Following which incident?

BY THE CLAIMANT:

First, he found out where I was working in 2014.

[42] Later on during the hearing, the RPD member returned to the issue of the multiple returns to Mexico. After referring to the attacks against her mother in 2011, the RPD member continued:

[TRANSLATION]

BY THE MEMBER:

OK. OK. I understand that is the event in the file. I understand that that is the event of April 2011. That is clear enough.

What is less clear for the tribunal, Madam, is that I [...] I see that you returned 10 times.

BY THE CLAIMANT:

Yes.

BY THE MEMBER:

To Mexico following that event that is, according to you, the most important event pertaining to your fear.

For what reason [...]

BY THE CLAIMANT:

I [...]

BY THE MEMBER:

Did you return 10 times to Mexico, please, between 2013 and 2018?

BY THE CLAIMANT:

Because between 2011 and 2014, there was no risk for me. That is what I thought. Therefore [...]

BY THE MEMBER:

There was no what?

BY THE CLAIMANT:

No risk.

BY THE MEMBER:

None? Is that it? No risk?

BY THE CLAIMANT:

I had [...] I was not threatened.

BY THE MEMBER:

In 2011 and 2014?

BY THE CLAIMANT:

In 2014.

BY THE MEMBER:

No risk.

BY THE CLAIMANT:

I had a number of psychological problems caused by my mother's problems, because of the separation, but I had no threats at that time.

However, in 2014, my life went on. I stayed at work. I was married. I was trying to have a normal life.

But, in 2014, I arrived in my work place and my [...] my boss told me: "somebody called today to say [...] to ask for you and they say that you and your mother - they mentioned the name of your mother - have won something like the lottery, something like that. And they left a telephone number for you to reach them".

[...]

[43] According to the Applicant, she sensed risk at that point in 2014; she was discovered and felt targeted, so she left her employment in March 2014.

[44] What I understand the Applicant to be saying is that although her initial fear of the agent of persecution does in fact date back to 2011, she experienced no issues and felt no sense of being at risk until the suspicious call to her employer in March 2014.

[45] The omission of this subtle point in the RPD's rendition of the facts is important for two reasons: first, the Applicant took two trips to Canada in 2013 to visit her mother – meaning that her "at risk" returns to Mexico, in her mind, only amounted to eight, rather than ten return trips that the RPD kept insisting upon.

[46] This subtlety may or may not have played a role in the RPD's adverse credibility finding, however given the importance placed upon the multiple return trips in the RPD decision, it may have.

[47] The second consequence of the failure to accurately set out the Applicant's evidence on this issue relates to the manner in which the entire episode involving her termination of her employment in 2014 is addressed in the RPD's decision, which I discuss further below.

[48] I also note another area where the RPD may not have fully and accurately set out the testimony of the Applicant. At paragraphs 14 to 16 of its decision, the RPD stated:

[TRANSLATION]

The tribunal finds that all these travels between Mexico and Canada are numerous and constitute behaviour incompatible with the alleged fear.

Confronted by the tribunal that her numerous return travels to Mexico did not appear compatible with her alleged fear, the claimant explains that her husband was in Mexico and, therefore, she could not spend a lot of time in Canada, that even if she was in Mexico, she travelled a lot, and that she had already received a Certificat de sélection du Québec (CSQ) issued by mistake and that she could not apply for refugee status simultaneously with her application for permanent residency.

The tribunal does not accept the explanation of the claimant for the following reasons. First, the fact that her husband was in Mexico does not alter the fact that her life was in danger in that country, the tribunal would have thought that the claimant would have applied for protection at the first opportunity, irrespective of the location of her husband. Second, even though the claimant travelled a lot within Mexico, that does not explain why she came so many times without filing for protection if the alleged facts were true. On the contrary, the fact that the claimant returned 10 times to Mexico between 2013 and 2019 and travelled a lot in that country shows that her life was not in danger, as alleged. Finally, the fact that the claimant received a CSQ by mistake, and that she

had chosen to wait for a decision concerning her application for permanent residency, based on a CSQ that she knew had been issued in error, shows dishonesty on her part. In addition, the tribunal finds that the CSQ issued by mistake bears the date of 14 June 2016, and that the rejection of the application for permanent residency bears the date of 23 October 2017. Since the claimant travelled five times to Canada before the issuance of her erroneous CSQ, and three more times - including the final trip after she had received the rejection of her application for permanent residency - the tribunal rejects that explanation.

[49] Actually, the testimony went like this:

[TRANSLATION]

BY THE MEMBER:

OK. Listen, I find it difficult to accept your explanation, frankly.

That you were waiting for a decision concerning your residency application, and that would explain the reasons for which you returned so many times to Mexico. Is that it [...]

BY THE CLAIMANT:

I can [...]

BY THE MEMBER:

If I understand correctly.

BY THE CLAIMANT:

Yes. I could not stay here more than six months because I had a visitor's visa, while waiting for a decision concerning my permanent residency. I had already been accepted by Quebec, but the CSQ does not allow you to live here in Canada on a permanent basis.

So, I had no choice, I had to leave and return to Mexico and come back to Canada to seek shelter here and, in my country, I travelled from city to city to protect myself.

I had no choice, I had nowhere to go.

[...]

COUNSEL:

Did you ask a lawyer or a consultant to check whether you are [...] whether you meet the criteria of a skilled worker?

BY THE CLAIMANT:

Yes. I asked a lawyer to guide me in 2014 and he is the one who told me: “for you, it is better and safer to apply as a skilled worker rather than apply for refugee status”. And that is why I commenced my plan to do so.

However, before I was able to send my application to Project Québec, I received the CSQ. That is why I never filed the application. But it is the lawyer who guided me.

[...]

BY THE MEMBER:

So, a lawyer, whose name you don't remember, told you that it would be better to apply as a skilled worker in Québec?

BY THE CLAIMANT:

Yes

BY THE MEMBER:

And you did not [...] and you did not follow that advice? Is that it?

BY THE CLAIMANT:

I followed it, but when [...] when the [...] the dates that the programme “Mon projet Québec” it will [...] when the date for it was open, I had already received , a few days before, my CSQ, the “certificat de sélection du Québec”.

That is why I did not apply as a skilled worker. I had already been accepted by Québec.

BY THE MEMBER:

Good. I see that you returned to Mexico from August 2017 to December 2017. Why did you return to Mexico?

BY THE CLAIMANT:

My husband was there and I could not stay long here. So I [...] I [...] Even if I was in Mexico, I travelled a lot from city to city.

BY THE MEMBER:

I see that you returned to Mexico from January to March 2018. For what reason did you return to Mexico?

BY THE CLAIMANT:

My answer is the same. I had my [...] my husband That was a difficult issue for me since I had a connection there and yet, I was at risk in Mexico, but I could not abandon him and I was waiting for a decision as to my application for permanent residency. So [...]

[50] The Applicant, in essence, was finding refuge in her own way. While in Mexico, she moved around to avoid being found. Any time she could, she would travel to Canada to remain with her mother, limited always by her six-month tourist visa and the need to eventually return to be with her husband. She was awaiting an answer on her permanent residence application from Canada, which was finally received in October 2018.

[51] The Applicant already had a “Certificat de selection du Québec” [CSQ] in hand which was issued by the Province of Quebec on June 14, 2016, and which expired on June 14 2019 – a step in the process for permanent residency where one seeks to live in the Province of Quebec, but not a guarantee of acceptance by Canada.

[52] The RPD found that neither the fact that her husband was in Mexico, nor the fact that she moved around a great deal while in Mexico, nor the fact that she was awaiting an answer on her permanent residence application was enough justification not to have filed for refugee protection at an earlier stage.

[53] On its own, I would not be able to conclude that this finding was unreasonable.

[54] However, the RPD goes one step further by attributing *mala fides* to the Applicant. The RPD found that not only was her CSQ issued in error, but also that the fact that the Applicant elected to rely on an erroneously issued CSQ to support her permanent residency application was tantamount to dishonest conduct on her part.

[55] It is unclear why the CSQ was issued, but the fact that it was issued in error is not disputed by the Applicant. It was applied for by the Applicant's mother at the time she was granted refugee protection, although the Applicant did not technically meet the requirements in the way it was requested, as she was not a dependant of her mother.

[56] Attributing dishonesty or malicious intent to an applicant is subject to a very high threshold (*Canada (Citizenship and Immigration) v Dufour*, 2014 FCA 81 (CanLII), [2015] 3 FCR 75 at paras 59-60; *Douglas v Canada (Citizenship and Immigration)*, 2018 FC 770 at para 28; *Finney c Barreau du Québec*, 2004 CSC 36 (CanLII), [2004] 2 RCS 17 at paras 37-39; *Qin v Canada (Citizenship and Immigration)*, 2014 FC 846 at para 32; *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302, [1979] FCJ No 248).

[57] The Applicant stated that she was not aware, at the time, that the CSQ was issued in error, and thus she relied upon it in good faith.

[58] It is not clear from the RPD decision why the member has elevated what is admittedly an error in the issuance of a document to the level of dishonest conduct on the part of the Applicant. It was openly admitted by the Applicant during the hearing before the RPD that the CSQ was issued in error.

[59] What is not clear is at what point the Applicant became aware of the error: I have not been shown where the evidence clearly shows that the Applicant was aware that the CSQ was improperly issued while her application for permanent residence was being processed.

[60] I would think that if the RPD were to conclude that the Applicant knowingly supported her application for permanent residency with a false document, it was incumbent upon the RPD to specify when the Applicant became aware of the error. It did not.

[61] For these reasons, I find the adverse credibility finding of the RPD not to be reasonable.

B. *The termination of employment*

[62] As stated earlier, there were two consequences to the manner in which the RPD dealt with the Applicant's evidence, the first having been addressed above. The second consequence is that it also highlighted an event which the RPD did not directly address in its decision, *to wit*, the reason why the Applicant left her employment in March 2014.

[63] The Applicant asserted that having had about three-years of relative peace, she received in 2014 a strange telephone call at her work from unidentified individuals seeking information

about her and her mother. She feared it was the agent of persecution who had tracked here down. Therefore, she left her employer.

[64] The documentary evidence included what seems to be a release given by the Applicant to her employer dated March 22, 2014, with respect to any further obligations of employment towards her, yet the release document was never addressed by the RPD, nor was the incident involving the voluntary termination of her employment at the time.

[65] As stated by Mr. Justice Diner in *Wu v Canada (Minister of Citizenship and Immigration)*, 2016 FC 516 at paragraphs 12 and 14 [Wu]:

[12] A finding of “no credible basis” under subsection 107(2) of the Act may only be made where there is no credible or trustworthy evidence on which the RPD could make a positive finding (*Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 13). This is a high threshold that limits an Applicant’s subsequent procedural rights and the RPD must, before reaching it, look to the objective documentary evidence for any trustworthy or credible support for an Applicant’s claim. Importantly, to say that the Applicant lacked credibility is not the same as saying that the Applicant’s claim has no credible basis (*Pournaminivas v Canada (Citizenship and Immigration)*, 2015 FC 1099 at paras 7-9).

[14] In making a no credible basis finding, the RPD has an obligation to assess all the evidence and expressly state its reasons for its conclusion (*Geng v Canada (Citizenship and Immigration)*, 2001 FCT 275 at para 23). While the RPD is entitled to evaluate and weigh the evidence as it sees fit, it is unreasonable to conclude that the Applicant’s claim lacks any credible basis whatsoever in this particular matter when the RPD did not reject this letter or otherwise even explicitly consider it.

[Emphasis in the original text.]

[66] The departure from her employment in 2014 is a significant incident in the determination as to whether the Applicant's story is credible, yet the RPD does not address it. For this reason alone, the "no credible basis" finding is unreasonable.

C. *The Applicant's Mother's Claim*

[67] The acceptance of the mother's claim for refugee protection cannot, by itself, support the claim of her daughter. Although the mother's claim is the very foundation of the Applicant's expressed fear, there are fundamental differences in the evidence upon which the Applicant bases her claim, in particular the Tenant Issue, the Graffiti Issue, the Harassment Complaint, and the medical evidence.

[68] It was certainly open to the RPD to give little weight to the mother's claim in assessing that of the Applicant; however, I cannot see how evidence of her mother being granted refugee protection cannot be "credible or trustworthy evidence on which [the RPD] could have made a favourable decision" in relation to the claim made by her own daughter who had witnessed the acts of violence being perpetrated upon her mother (subsection 107(2) of the IRPA). As stated by the Applicant, her own claim and her mother's claim share a common genesis (i.e., a fear regarding the agent of persecution).

D. *Documentary Evidence*

[69] The Applicant submits that the RPD made its adverse credibility finding without taking into account the relevant documentary evidence, which included two newspaper reports

confirming that the agent of persecution is a dangerous individual who is wanted by Mexican authorities, and a U.S. government report on the country conditions in Mexico.

[70] The RPD found that while the documentary evidence cited by the Applicant may support a finding that the agent of persecution presents a generalized risk, the evidence simply does not allay its doubts as to the credibility of the Applicant's personalized risk.

[71] However, this is not generic evidence of a generalized nature regarding drug violence in Mexico. The newspaper reports relate to the very agent of persecution who was the perpetrator of the violence suffered by the Applicant's mother, which formed the basis of her claim for refugee protection. I need not assess the RPD's concerns on whether the agent of persecution presented a personalized risk to the Applicant; however, it can hardly be said that the documentary evidence is not "credible or trustworthy evidence" on which the RPD "could have made a favourable decision" (subsection 107(2) of the IRPA).

#### E. *The Graffiti Issue*

[72] The photographs in question show a wall containing this painted message: "I will find you [A.B.], kill you". According to the Applicant, the photographs confirm that the agent of persecution and his associates are out to kill her.

[73] The RPD gave no weight to the photographs because of the general credibility issues related to the Applicant's claim, and the fact that the photographs did not indicate the author of the graffiti. The fact that the RPD sought confirmation of the authorship of the graffiti death

threats so as to give it any weight, alone, smacks of a microscopic analysis of the evidence (*Francisco v Canada (Citizenship and Immigration)*, 2018 FC 456). The graffiti was explicit.

[74] The fact that the RPD based its finding upon what I have found to be an unreasonable assessment of the Applicant's credibility also militates in favour of finding that the RPD's assessment that this photograph was not "credible or trustworthy evidence" on which the it "could have made a favourable decision" is itself unreasonable under the circumstances (subsection 107(2) of the IRPA).

F. *Medical Evidence*

[75] I understand the RPD's concerns regarding the medical evidence, without necessarily agreeing with it. However, in reviewing the evidence, I cannot agree that it met the test required under subsection 107(2) of the IRPA. There were certainly elements of this evidence which could properly support the Applicant's claim.

G. *The Harassment Complaint*

[76] In her amended narrative, the Applicant stated that her mother's cousin (who she had never met) filed a complaint with the authorities because unknown individuals had come to her home on several occasions looking for the Applicant. The document is a "Procès-verbal informatif" (minutes) written by a mediator/conciliator officer for use in matters relating to cohabitation.

[77] At the RPD hearing, the RPD member questioned the Applicant about the nature of the document and stated that it did not appear to be a criminal complaint lodged with the police. The Applicant responded that she had thought it was, but even if it was not, it was in the form generally used in her area to file formal complaints.

[78] According to the transcript, the RPD member referred to an internet search he had conducted of the provision of the Mexican law regarding the criminal complaint procedure so as to discredit the report as a criminal complaint; it was this reference to personal knowledge that forms the basis of the Applicant's assertion of a failure in procedural fairness.

[79] Putting the procedural fairness issue aside, it seems to me that the RPD member focused unduly on the nature of the document, rather than what it purported to state.

[80] The RPD member's decision to give the document no weight had more to do with his general credibility concerns relating to the Applicant's claim and that she possibly mischaracterized the document, rather than on what the document was actually setting out as evidence (*Botros v Canada (Citizenship and Immigration)*, 2013 FC 1046; *Mui v Canada (Citizenship and Immigration)*, 2003 FC 1020, 31 Imm LR (3d) 91).

[81] Under these circumstances, since the RPD failed to address the content of the document, I can hardly see how it could reasonably conclude that the report, however qualified, did not constitute "credible or trustworthy evidence on which [the RPD] could have made a favourable decision" (subsection 107(2) of the IRPA).

VII. Conclusion

[82] Under the circumstances, I find the decision of the RPD unreasonable. Accordingly, I allow this application for judicial review.

[83] In addition, during the hearing, the Applicant made an unopposed request for a confidentiality order under Rule 151 of the *Federal Courts Rules*, SOR/98-106. I have considered the test set out in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), [2002] 2 SCR 522 at para 53, and am satisfied that it is appropriate to grant the Applicant's request for a Confidentiality Order pursuant to Rule 151.

**JUDGMENT in IMM-5967-19**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is allowed;
2. The decision dated September 5, 2019 is set aside and this matter is returned for redetermination by a different panel of the RPD;
3. The Court hereby orders that the materials filed in relation to this matter shall be treated as confidential and the style of cause is hereby anonymized; and
4. There is no question for certification.

"Peter G. Pamel"

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Judge

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

**DOCKET:** IMM-5967-19

**STYLE OF CAUSE:** A.B. v MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTREAL, QUÉBEC

**DATE OF HEARING:** MARCH 3, 2020

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** APRIL 28, 2020

**APPEARANCES:**

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