

Federal Court



Cour fédérale

Date: 20210803

Docket: IMM-3604-20

Citation: 2021 FC 813

[ENGLISH TRANSLATION]

Ottawa, Ontario, August 3, 2021

PRESENT: The Honourable Mr. Justice McHaffie

BETWEEN:

**CARLOS DANIEL RAMOS MORALES
ROSANGEL PEREZ ZUNIGA
ANNETTE RAMOS PEREZ
MICHELLE RAMOS PEREZ
KATIA RAMOS PEREZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants are a family from Mexico seeking refugee protection in Canada. The parents, Mr. Ramos and Ms. Perez, allege that Mr. Ramos was kidnapped, threatened and beaten

by members of a criminal cartel called *Los Caballeros Templarios* (the Knights Templar). The cartel forced Mr. Ramos to deliver cocaine and attempted to extort Ms. Perez's business. The applicants fear that the cartel is seeking vengeance against them because Mr. Ramos refused to cooperate and he and Ms. Perez reported the cartel to the Mexican authorities.

[2] The Refugee Protection Division (RPD) and the Refugee Appeal Division (RAD) found that Mr. Ramos and Ms. Perez lacked credibility and rejected the claim for refugee protection. In this application for judicial review, the family alleges that the RAD erred in its credibility findings and failed to consider all the evidence on file.

[3] I agree with the applicants that three of the RAD's key credibility findings were unreasonable. Despite the presence of several reasonable credibility findings, the unreasonable findings were sufficiently central that I cannot state that the decision has the requisite degree of justification, intelligibility and transparency.

[4] The application for judicial review is therefore allowed, and the applicants' appeal is remitted to the RAD for redetermination.

II. Issues and standard of review

[5] The applicants raise three issues, which I will address in the order in which they were presented at the hearing:

(1) Did the RAD fail to apply the presumption of truthfulness of testimony?

(2) Did the RAD take into account all the evidence on file?

(3) Did the RAD consider information provided in the National Documentation Package?

[6] Each of these issues goes to the merits of the RAD's decision. They are reviewable on the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16–17, 23–25. Factual findings, including those relating to credibility, are entitled to deference, and the Court will not reassess the evidence: *Vavilov* at para 125. That said, credibility findings are not “immune from review” and must be justified in light of the evidence: *N'kuly v Canada (Citizenship and Immigration)*, 2016 FC 1121 at para 24; *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 at paras 19, 31; *Vavilov* at para 126.

III. Analysis

A. *Background: the claim for refugee protection and its rejection*

[7] To put the applicants' arguments in context, an overview is required of the facts, the RPD's decision, the applicants' arguments before the RAD and the RAD's decision.

(1) The allegations central to the claim for refugee protection

[8] Mr. Ramos alleges that in 2015, a colleague named Lozada revealed to him that he was a member of the Knights Templar. Lozada proposed that he join the cartel and engage in drug trafficking. Mr. Ramos refused. In 2016, Mr. Ramos and Ms. Perez opened a dairy shop. In 2016 and 2017, Lozada came to the shop, threatened Ms. Perez and tried to extort money from her. On June 12, 2017, Mr. Ramos was kidnapped and beaten by Lozada and his associates. The family left the family home until June 21, 2017, in an effort to keep a low profile. On June 26 and 27,

2017, Mr. Ramos and Ms. Perez filed complaints with the Mexican authorities, specifically the Municipal System for Integral Family Development (DIF) and the Attorney General of the Republic (PGR).

[9] On July 6, 2017, a leader of the cartel told Mr. Ramos that Lozada would bring him packages of cocaine that he would have to deliver for them. Under threat, Mr. Ramos made two deliveries, on July 14 and 18. He resigned from his job on July 25, the family went into hiding in the home of relatives on July 27, and they left the country for Canada on September 8, 2017. They claim to fear the cartel members, who are allegedly seeking vengeance against them for refusing to comply with their demands and for having reported the cartel to the authorities.

(2) The RPD's credibility findings and the applicants' appeal

[10] The RPD identified five problems with the evidence submitted by Mr. Ramos and Ms. Perez:

- (a) In their Basis of Claim Forms (BOC Forms), complaints and testimony, Mr. Ramos and Ms. Perez mentioned a variety of dates as the date on which Lozada revealed that he was a member of the cartel and asked Mr. Ramos to collaborate with them. The RPD noted that their accounts contained contradictory information regarding that date.
- (b) The PGR report of June 26, 2017, states that Mr. Ramos had made earlier presentations [TRANSLATION] "to that authority". The RPD identified a contradiction between this statement and Mr. Ramos's claim that he appeared before the PGR for the first time on June 26, 2017.

(c) Ms. Perez's complaint to the PGR dated June 27, 2017, contains the phrase, "*ya que de manera forzada lo obligo a intercambiar droga*" [emphasis added]. A copy of this complaint translated into French by counsel for the applicants was filed by the applicants, and in it that phrase was translated as follows: [TRANSLATION] "this man wants to force him to sell drugs" ["Cet homme veut l'obliger à échanger de la drogue" in French] [emphasis added]. At the hearing, the RPD asked the interpreter to translate the phrase, and the interpreter used [TRANSLATION] "he forced him" ["il l'a obligé" or "il l'obligeait" in French]. The applicants filed an additional translation done by a translator, which repeated the translation [TRANSLATION] "wants to force" ["veut l'obliger" in French]. The RPD accepted the interpreter's translation and held that the phrase meant that Mr. Ramos had already delivered the packages of drugs at the time of the complaint. It therefore noted a contradiction between this statement and Mr. Ramos's statement that he delivered drugs for the first time in July 2017.

(d) The RPD noted an [TRANSLATION] "inconsistency" in Mr. Ramos's conduct because he had not returned to report the fact that he had ultimately gone ahead with the cocaine deliveries.

(e) The RPD also noted a contradiction between the testimony at the hearing regarding the extortion at the dairy shop and the BOC Form, which made no mention of it.

[11] The RPD did not accept the witnesses' explanations on these points. It held that it did [TRANSLATION] "not believe the applicants' story of persecution, threat and risk".

[12] The applicants appealed to the RAD. They argued that the RPD erred in its credibility findings, in the following respects in particular:

- there was no contradiction with respect to the dates of Lozada’s proposals and that in any case the date is peripheral and secondary [issue (a) above];
- the translation on which the RPD relied raised no contradiction [issue (c)];
- it was unreasonable to discount Mr. Ramos’s credibility based on the fact that he did not incriminate himself to the Mexican authorities when he could have been arrested and charged [issue (d)]; and
- the criticisms to the effect that the BOC Form did not mention the extortion by Lozada were not justified [issue (e)].

(3) The RAD’s decision

[13] The RAD held that the RPD had not erred. Regarding issue (a), the RAD accepted that “on its own”, this element could appear to be ancillary, but that in light of all the evidence, the time at which Lozada invited Mr. Ramos to join the cartel “[was] not a minor detail”. It held that the contradictions between the accounts undermined the persecution story.

[14] As for issue (c), the RAD held that the translation issue “did not lead to a direct conclusion by the RPD”. However, the RAD noted that the interpreters present at the hearings were certified by the Immigration and Refugee Board (IRB) and that their credentials were recognized. The RAD held that there was a discrepancy between the translations and that the

interpreter's translation was inconsistent with the testimony to the effect that Mr. Ramos had not complied with the order to sell drugs before July 2017.

[15] Regarding issue (d), the RAD noted that the RPD had already found that Mr. Ramos's testimony was not credible, and that raising the alleged inconsistency merely "helped to strengthen" this finding. The RAD noted that Mr. Ramos had not testified that he was afraid he would attract trouble for filing a complaint, but had simply responded that he had not done so.

[16] Finally, with respect to issue (e), the RAD noted that Mr. Ramos's account in his BOC Form was silent on the extortion attempt, indicating only that the members of the cartel continued to [TRANSLATION] "harass" Ms. Perez. It also noted that neither Ms. Perez's complaint to the DIF nor that to the PGR mentions the extortion attempt. It held that the RPD had correctly decided that the applicants' explanations of this contradiction were insufficient.

B. *Analysis of the applicants' arguments*

(1) The RAD did not fail to apply the presumption of truthfulness

[17] A claimant benefits from a presumption that his or her sworn testimony is true: *MalDonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (CA) at p 305; *Gabor v Canada (Citizenship and Immigration)*, 2010 FC 383 at para 23. However, that presumption is rebuttable if there is "reason to doubt" the testimony: *MalDonado* at p 305; *Gabor* at para 23; *Abolupe v Canada (Citizenship and Immigration)*, 2020 FC 90 at para 21.

[18] The applicants claim that the RAD failed to apply this presumption. They allege that the RAD attempted to [TRANSLATION] “build a case” that was prejudicial to their credibility and exaggerated the alleged contradictions without taking into account the evidence as a whole.

[19] Even if I find below that some of the RAD’s credibility findings are unreasonable, I can find no evidence that the RAD applied the wrong analytical framework. The RAD’s finding was in fact that there was reason to doubt the testimony of Mr. Ramos and Ms. Perez. Such a finding is not incompatible with *MalDonado* and does not indicate that the presumption of truthfulness was applied incorrectly.

[20] The applicants also cite on this point the Supreme Court of Canada’s decision in *Chan* for the principle that the RAD must give the claimant the benefit of the doubt: *Chan v Canada (Minister of Employment and Immigration)*, [1995] 3 SCR 593 at paras 47, 142, citing the United Nations High Commissioner for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status* [UNHCR Handbook] at paras 196, 203. Again, I do not find that the RAD’s decision conflicts with *Chan*. As noted by the majority in *Chan*, the UNHCR Handbook sets out that the benefit of the doubt should only be given when the examiner is satisfied as to the applicant’s credibility: *Chan* at para 142.

[21] On this point, I cannot accept that the reference in the UNHCR Handbook to “generally known facts” means that credibility must be assessed solely with regard to such facts. The Handbook also states that “[t]he applicant’s statements must be coherent and plausible, and must not run counter to generally known facts” [emphasis added]: *Chan* at para 47, citing the UNHCR

Handbook at para 204. It was the coherence of the applicants' statements that was in doubt in this case. As submitted by the Minister, this Court has confirmed that the RAD may base its credibility findings on contradictions, inconsistencies and omissions in a claimant's evidence, provided that they are not illusory or trivial: *Guyen* at para 35, citing *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paras 43–46. Contrary to the applicants' claims, the RAD is not exclusively limited to the main event—the kidnapping on June 12, 2017—in its credibility analysis.

[22] The applicants also claim that the RAD applied the wrong threshold to credibility findings. Dealing with issue (a) above, the RAD noted that “the timing of when the principal appellant was allegedly invited to join the Knights Templar is not a minor detail.” Contrary to the applicants' arguments, this phrase does not mean that the RAD applied a threshold of “triviality” to questions of credibility, according to which a question of credibility is sufficiently central as long as it is not trivial. By my reading of the RAD's reasons, it was responding to the applicants' argument that the date in question was peripheral or accessory and should not undermine the applicants' credibility. To state that the fact is not a minor detail in the circumstances simply amounts to expressing disagreement with the applicants' claims on this point.

(2) The RAD's credibility findings are not reasonable

[23] The applicants challenge several of the RAD's findings regarding their credibility. For the reasons that follow, I agree that enough of the findings are unreasonable that the RAD's decision as a whole must be considered unreasonable.

[24] I note that the applicants characterize this issue as a failure by the RAD to consider all of the evidence, citing *Jang v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 996 at para 29; *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paras 14–17; and *Kim v Canada (Citizenship and Immigration)*, 2010 FC 149 at para 68. However, in its reasons, the RAD clearly referred to relevant evidence, including the documents relied on by the applicants. In my view, what is at issue here is the findings drawn from the evidence rather than a failure to take it into account. This nuance affects neither the analysis nor the outcome.

(a) *The translation of the complaint [issue (c)]*

[25] As stated above, the RAD upheld the RPD’s conclusion regarding Ms. Perez’s complaint to the PGR and its translation. The key determination here was that there was an inconsistency between this complaint and Mr. Ramos’s statement that he had not delivered drugs prior to July 14 and 18, 2017. The RAD accepted the translation of the interpreter at the hearing, according to which the words “*lo obligo*” mean [TRANSLATION] “he forced him” [“il l’a obligé” or “il l’obligeait” in French], which the RPD understood to mean that Mr. Ramos had already delivered the drugs when the complaint was filed.

[26] I find the RAD’s conclusion unreasonable. Regardless of which translation of “*lo obligo*” was accepted, it was unreasonable for the RPD and the RAD to consider this phrase out of its context within the complaint. In particular, a few lines later within the same complaint, the following sentence appears: “*Estas personas se que se dedican a cosas no muy buena como el vender droga, y quieren obligar a mi esposo de una manera o de otra a que el les venda droga*”

en su lugar de trabajo”. This sentence was translated by the translator as follows:

[TRANSLATION] “These persons who engage in shady activities like selling drugs and who want to force my husband in one way or another to sell drugs for them at his workplace” [“Ces personnes qui se dédient à des affaires pas bonnes comme vendre de la drogue et qui veulent obliger mon mari d’une manière ou d’autre qu’il vende la drogue pour eux à son lieu de travail . . .” in French]. The RDP and RAD did not raise any questions regarding this translation, and the interpreter was not asked to translate it. On my reading, this sentence provides clearer support for the meaning proposed by the applicants: that Lozada wanted Mr. Ramos to sell drugs but that the latter had not yet done so when the complaint was filed.

[27] In my view, it was not reasonable to conclude that Mr. Ramos had already delivered the drugs before June 27, 2017, and that his credibility was undermined by this fact, without considering the complaint in its full context. Emphasizing a single phrase and its translation without reading it together with the other passages dealing with the same subject can lead to an erroneous assessment of the evidence as a whole.

(b) *The fact that Mr. Ramos did not report himself to the Mexican authorities [issue (d)]*

[28] The RPD found Mr. Ramos’s conduct [TRANSLATION] “inconsistent” because he never reported to the Mexican authorities the fact that he had finally made two deliveries of cocaine. The RAD recognized that “denouncing one’s own actions might seem to present the risk of incriminating oneself”, but it rejected the applicants’ arguments on this point for three reasons. First, it noted that there were several other contradictions that were not challenged. By my

reading, there was only one unchallenged contradiction, the one I identified as issue (a). In any case, the existence of other contradictions has no bearing on the reasonableness of the RPD's analysis of the fact that Mr. Ramos did not incriminate himself.

[29] Second, the RAD noted that Mr. Ramos did not testify that he feared attracting problems; he merely said that he had not reported what he had been forced to do. In my view, this is no reason to draw a negative inference regarding Mr. Ramos's credibility. Mr. Ramos was not asked why he did not incriminate himself. He gave no explanation other than his statement that he was in a state of despair. Generally, it is not open to applicants to rely on explanations that were not given during their testimony. However, the RAD itself acknowledged that reporting his own crimes to the authorities was inherently risky. In such circumstances, I do not find it reasonable to rely on the fact that Mr. Ramos did not testify that he feared attracting problems or to characterize as an "inconsistency" the fact that he failed to report to the Mexican authorities that he had been forced to deliver drugs.

[30] Third, the RAD rejected the applicants' argument based on the *Canadian Charter of Rights and Freedoms*. I agree with the RAD that that *Charter* did not apply to the applicants when the events occurred in Mexico. However, this does not change the fact that it was unreasonable to reject the applicants' other arguments regarding this issue.

(c) *The failure to refer to the extortion [issue (e)]*

[31] The RAD upheld the RPD's finding that Mr. Ramos's and Ms. Perez's credibility was undermined because their BOC Form stated that Lozada had threatened Ms. Perez and harassed

her at her dairy shop but made no mention of the extortion. The RAD noted that in Ms. Perez's complaints to the DIF or the PGR, "there is nothing about an attempt to extort [her]".

[32] However, Ms. Perez's complaint to the DIF made on June 26, 2017, clearly states that Lozada came to the dairy shop and demanded [TRANSLATION] "a share for having opened my business [in the amount of] five thousand pesos, which I had to give him merely for having opened my business". As admitted by the Minister, this is a fairly clear reference to an extortion attempt, which appears to have been missed by the RAD.

[33] This error by the RAD may have arisen from the fact that, according to the Certified Tribunal Record (CTR), the copy of the complaint to the DIF in the appellant's record was missing one page of the original and the translation. However, this slip is relatively obvious on the face of the document (the account is interrupted in the middle of a sentence), and the full document was available in the RDP record that was before the RAD.

[34] The Minister submits that the applicants did not mention the complaint to the DIF on appeal. I disagree. In their factum before the RAD, the applicants referred to Exhibits "C-6" and "C-7". In the appellant's record, and in a "List of Claimant's Documents" from the RPD dated November 23, 2018, Exhibit "C-6" is listed as the complaint to the DIF dated June 26, 2017. Another copy of the same document in the CTR bears number "C-5", but it is clear that the applicants directly referred to the complaint in question. In any case, the RAD itself referred to "Exhibit C-6, complaint to the attorney general of the municipality of Marquès", so it is clear that the reference was understood.

[35] I find that the error relating to the extortion allegation renders the RAD's conclusion with respect to issue (e) unreasonable. The RAD drew a negative credibility finding from the fact that the BOC Form did not mention the extortion attempt and mentioned only threats and harassment. The fact that a clear allegation of attempted extortion is found in a prior document, and that the story was therefore not simply fabricated during the hearing, is relevant to the assessment of the BOC Form and the applicants' credibility on this point.

(d) *The cumulative effect of the errors*

[36] The Minister argues that even if the RAD's decision does contain errors, these are not determinative given the other findings with respect to the applicants' credibility. On the whole, I am persuaded that the errors are sufficiently central or significant to render the decision unreasonable: *Vavilov* at para 100.

[37] It is true that the RAD held that the translation issue [issue (c)] "did not lead to a direct conclusion by the RPD". The RAD also noted that issue (d) simply "helped to strengthen the RPD's finding". Nevertheless, three of the five findings regarding the applicants' credibility were unreasonable. Having read the RAD's decision in full, I am not satisfied that the decision regarding the applicants' credibility and the outcome of the appeal would necessarily have been the same in the absence of these findings. I therefore find that the RAD's decision cannot stand.

C. *The RAD did not err by failing to refer to the National Documentation Package*

[38] Although the above is determinative of the application for judicial review, I will briefly address the applicants' final argument. They claim that the RAD erred by failing to refer to the documents in the National Documentation Package (NDP) on Mexico published by the IRB. They submit that the NDP is an important source of evidence that the RAD must consider before making credibility findings and that the failure to refer to it is unreasonable and contrary to IRB policies.

[39] I cannot accept this argument. The RAD is an appeal tribunal. This Court has held repeatedly that the RAD is not required to address arguments and evidence not raised before it: *Dhillon v Canada (Citizenship and Immigration)*, 2015 FC 321 at paras 18–24; *Cruz v Canada (Citizenship and Immigration)*, 2020 FC 22 at para 30; *Singh v Canada (Citizenship and Immigration)*, 2020 FC 510 at para 22; *Ameh v Canada (Citizenship and Immigration)*, 2020 FC 875 at paras 17–18. The applicants made no reference to the NDP in their submissions before the RAD. The RPD made no reference to the NDP either, and the applicants did not raise this omission as an error before the RAD. In the circumstances, I cannot conclude that it was unreasonable for the RAD not to refer to the NDP.

[40] The applicants cite Justice de Montigny's decision in *Hooper*, to the effect that a reference to the NDP in a footnote was insufficient to establish that the NDP had been considered: *Hooper v Canada (Citizenship and Immigration)*, 2007 FC 1359 at para 29. They note that in this case, the RAD did not even do that. However, in *Hooper* it was an RPD rather than an RAD decision that was under review, and the primary issue was the selective reading of the NDP: *Hooper* at paras 1, 19–22, 28–29. As stated, the RAD's role as an appeal tribunal is

different. The RAD has a duty to address the issues raised by an appellant. If the documents in the NDP are not raised by an appellant as an issue or as relevant to such an issue, it is not unreasonable for the RAD not to mention them.

[41] This is especially the case where, as in this instance, the NDP is not relevant to the issues raised by the applicants. Before the RAD, the issues were based on the RPD's credibility findings. The findings were based on the applicants' allegations that they were victims of violence, threats and extortions at the hands of the members of the Knights Templar. Despite the applicants' submissions, the mere fact that the Knights Templar operate in Mexico or that their methods include violence and extortion does not materially affect the credibility of the applicants' story specifically.

IV. Conclusion

[42] Several of the credibility findings upheld by the RAD were unreasonable, and the decision cannot stand. The application for judicial review is therefore allowed and the applicants' appeal is remitted to a differently constituted panel of the RAD for redetermination.

[43] No serious question of general importance was proposed by the parties, and no question is certified.

JUDGMENT in IMM-3604-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is allowed, and the applicants' appeal is remitted to a differently constituted panel of the RAD for redetermination.

"Nicholas McHaffie"

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3604-20

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