

Federal Court



Cour fédérale

Date: 20211129

Docket: IMM-2292-20

Citation: 2021 FC 1320

Ottawa, Ontario, November 29, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**LUISA FERNANDA CHAPETON
RODRIGUEZ
AND
JUAN DIEGO VILLARAGA
CHAPETON AND
MARTIN VILLARAGA CHAPETON
[MINORS BY THEIR LITIGATION
GUARDIAN LUISA FERNANDA
CHAPETON RODRIGUEZ]**

Applicants

and

**THE MINISTER OF
CITIZENSHIP AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Principal Applicant, Ms. Luisa Fernanda Chapeton Rodriguez, and her two sons [collectively the Applicants] are citizens of Colombia.

[2] The Applicants have brought this Application for Leave and for Judicial Review of a decision of the Refugee Protection Division [RPD] dated July 24, 2019, rejecting their claim for refugee protection.

[3] Having considered the submissions of the parties, I am not persuaded that the RPD committed any error warranting the Court's intervention. The Application is dismissed for the reasons that follow.

II. Background

A. *Separate Claims*

[4] The Applicants entered Canada from the United States on September 8, 2018, at a regular land port of entry and initiated a claim for refugee protection.

[5] The Principal Applicant's husband, also a citizen of Colombia, had previously entered Canada irregularly and commenced a separate claim for protection.

[6] The RPD heard the claims jointly. The Applicants' claim relies on the narrative advanced by the Principal Applicant's husband and the evidence provided by him before the RPD. The RPD rejected the claims, finding credibility to be the determinative issue. The RPD's negative decision was appealed to the Refugee Appeal Division [RAD].

[7] The RAD disposed of the appeal in two separate decisions. The RAD first found that it lacked jurisdiction to consider an appeal by the Applicants. The Applicants' circumstances brought them within the scope of the provisions of the *Canada – U.S Safe Third Country Agreement* and paragraph 110(2)(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The Applicants' recourse from the RPD decision was therefore judicial review before this Court.

[8] The RAD considered and refused the appeal of the Principal Applicant's husband. He has since pursued a separate Application for Leave and for Judicial Review of the RAD decision in this Court: Court docket IMM-1948-20.

[9] This Application and the Application in IMM-1948-20 were heard consecutively.

B. *Basis of Claim*

[10] The Principal Applicant's husband reports he fears persecution in Colombia based on political opinion and membership in a particular social group. He reports that he was an active supporter of Gustavo Petro for president and Senator Oscar de Jesus Hurtado in recent elections

in Colombia and that he is also involved with labour unions, specifically the Central Union of Workers and the Union of Avianca Airlines (his former employer).

[11] The Principal Applicant's husband alleges that on May 21, 2018, while travelling in an SUV for the purpose of campaign work in the Medellín area of Colombia, shots were fired at the SUV as it travelled through a wooded area. The Applicants report a series of further threatening messages and attempts to locate them between May 2018 and August 2018. One caller reportedly made reference to the May 2018 SUV attack. The Applicants also report that they sought protection from the National Protection Unit, which provided the Principal Applicant's husband with a bulletproof vest and a contact number. The Applicants also reported the threatening calls to the police and the public prosecutor's office but neither responded.

[12] The family decided that remaining in Colombia would expose them to unnecessary risk and they travelled to the United States. They did not claim protection in the United States because of reports that South American refugee claimant families were being separated in the United States and children mistreated. The family chose to seek refugee protection in Canada.

III. Decision under Review

[13] The RPD found that the Principal Applicant's husband was not credible, noting inconsistencies relating to key aspects of the narrative between his original Basis of Claim [BOC], his amended BOC and his testimony before the RPD. The RPD rejected the Principal Applicant's husband's explanations that the identified inconsistencies and omissions were simply

minor clarifications expanding upon the basic details provided in the original BOC or were attributable to translation errors.

[14] The RPD also noted the absence of corroborating documentary evidence to establish the Principal Applicant's husband's reported involvement in the presidential campaign and his role in union activities. This undermined his credibility. In considering the documentary evidence that was provided, the RPD also took issue with the failure of the Applicants to supply original documents. The RPD drew a further adverse inference from the failure to claim protection in the United States and found the Applicants had engaged in asylum shopping but noted this was a minor point and not determinative of the claim.

[15] The RPD concluded that the Applicants had failed to adduce sufficient credible and trustworthy evidence to establish the events alleged in the husband's narrative or demonstrate that any agent of persecution would have an interest in them were they to return to Colombia. The RPD concluded the Applicants faced less than a serious possibility of persecution in Colombia and that they were not persons in need of protection.

IV. Issues and Standard of Review

[16] The Parties identify multiple issues, which I am satisfied are best framed as follows:

- A. Did the RPD err in its credibility analysis?
- B. Did the RPD err in its treatment of the evidence and the law?

[17] The issues identified above are to be reviewed against the presumptive standard of reasonableness. A reasonable decision is one that is justified, transparent and intelligible, and is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 16 and 85 [*Vavilov*]).

V. Analysis

A. *The RPD did not err in its credibility analysis*

[18] The Applicants submit that the RPD unreasonably overemphasized some inconsistencies that were not sufficiently serious enough to merit an adverse credibility finding. The Applicants submit that the RPD exaggerated the extent to which the testimony, the original BOC narrative and the revised BOC differed and microscopically scrutinized those differences. They submit that the inconsistencies were reasonably explained.

[19] Contrary to the Applicants’ submissions, many of the inconsistencies identified by the RPD were neither minor nor elaborative. For example, the reported attack on the SUV was an important event in the series of reported events supporting the claim, but the circumstances surrounding this attack evolved and the evidence was inconsistent. Other key events, including reported efforts by the agents of persecution to locate the Applicants, were either mischaracterized or omitted from the original narrative. Efforts to seek state protection and a move by the family to Cartagena, where they resided for roughly a month just prior to departing Colombia, were also omitted from the original BOC narrative.

[20] The Applicants explained the omissions and inconsistencies as being the result of the Principal Applicant's husband's fatigue on arrival in Canada, his understanding that the original BOC could be amended, and translation errors.

[21] The RPD considered the explanations provided and noted that many of the omissions were not simply an absence of full detail but instead a divergence in detail. The RPD also relied upon the BOC form, which instructs claimants to explain harm, mistreatment or threats in detail. It was not unreasonable for the RPD to reject the explanations provided by the Applicants. The ability to amend a BOC does not insulate a claimant from a credibility assessment in respect of inconsistencies or omissions arising from an amendment (*Aragon v Canada (Citizenship and Immigration)*, 2008 FC 144 at para 19).

[22] It was also reasonable for the RPD to conclude that many of the omissions and inconsistencies related to aspects of the narrative that went to the heart of the Applicants' claim, to consider the inconsistencies and omissions cumulatively, to conclude the presumption of truthfulness had been rebutted and to find the Applicants not to be credible (*Janvier v Canada (Citizenship and Immigration)*, 2020 FC 142 at para 22). The RPD's reasons in this regard justify the conclusions reached and are transparent and intelligible (*Vavilov* at para 81).

B. *The RPD did not err in its consideration and treatment of the evidence and application of the law*

[23] The Applicants identify numerous issues with the RPD's treatment of the evidence and application of the law. I address these concerns below.

[24] The Applicants submit that the RPD erred by not allowing the Principal Applicant's husband to file a political party membership card at the outset of the hearing, by rejecting translated material that was not provided in its original form and by finding that police complaint reports created by the Principal Applicant's husband had little probative value. The Applicants also submit the RPD unreasonably discounted the Principal Applicant's husband's explanation for his inability to obtain original political campaign documents to corroborate the claim that he was politically active. In addition, it is argued the RPD erred by making findings regarding the Principal Applicant's husband's profile, by finding that the Applicants had engaged in forum shopping, by not allowing testimony relating to the family's lifestyle in Colombia and by not completing a section 96 or section 97 analysis.

[25] The RPD reasonably found that the explanation for the attempted late filing of the political membership card - the Applicants did not view it as an important document - reflected that the document was not objectively important. The membership card corroborated nothing more than political party membership; it did not corroborate the reported active participation in political activity that underpinned the claim. Similarly, I find no fault in the rejection of documentation that did not comply with the *Refugee Protection Division Rules*, SOR/2012-256 [RPD Rules], particularly in this circumstance where the Applicants were represented by counsel.

[26] The RPD also found that the documentary evidence provided to corroborate the Applicants' efforts to seek state protection was self-generated and did not establish that the information had been submitted to or received by the police or other agencies. The Applicants

argue that in assigning little probative value to these documents, the RPD unreasonably rejected their explanation for not having provided original documentation. The Applicants advance a similar argument in respect of the RPD's concerns with the lack of documentation corroborating the Principal Applicant's husband's reported active involvement in the Colombian presidential campaign and organized labour.

[27] The RPD did consider the Applicants' explanation. In doing so, the RPD did not conclude the lack of original documentation was itself the major issue but instead found the issue to be the lack of documentation "in the context of a lack of reasonable efforts to try to obtain such documentation." The Applicants did provide an explanation for why original corroborating documentation or evidence was not available (it was in government archives or individuals were not accessible for security reasons); however, they did not explain the absence of any evidence detailing efforts to overcome these obstacles.

[28] In the absence of such evidence, the RPD did not err in relying on Rule 11 of the RPD Rules, which states that a claimant must provide acceptable documents establishing elements of their claim or explain why they did not provide such documents and the steps taken to obtain them. The RPD's conclusions in this respect were reasonably available to it.

[29] Nor did the RPD err in addressing the Principal Applicant's husband's profile in the course of its reasons. The RPD noted that Ms. Chapeton Rodriguez's husband was well educated, intelligent and well spoken. These attributes were established in the evidence or were observable by the RPD in the course of the hearing. In addressing the explanations provided for

the deficiencies in the original BOC and the failure to claim protection in the United States, it was not unreasonable for the RPD to make reference to these attributes.

[30] The Applicants further submit that it was not reasonable for the RPD to find they had engaged in forum shopping and that the Principal Applicant's husband had provided a reasonable explanation in light of the American government's policies and treatment of refugee claimants at the time. While the Applicants disagree with the RPD's conclusion that they had engaged in forum shopping, the finding was not inconsistent with the evidence. The RPD explained the finding, which was reasonably available to it. I also note the RPD specifically stated this was not a central issue, nor was it determinative in assessing the claim: "I would still have reached the same negative decision even without that point."

[31] The Applicants also take issue with the RPD having questioned the relevance of evidence their counsel sought to elicit regarding their standard of living in Colombia. Again, this discloses no reviewable error. It was not inappropriate for the RPD to question the relevance of the evidence. Having done so, counsel chose not to make submissions on relevance but simply moved on. Counsel did not provide the RPD the opportunity to determine the question of relevance. No error was made.

[32] Finally, the Applicants argue the RPD erred in not completing a section 96 or section 97 analysis after finding that the Applicants were not credible. I adopt the Respondent's submissions in this respect. A claimant's lack of credibility is a determinative issue that will normally be sufficient to dispose of the claim; that is the case here (*Singh v Canada (Citizenship*

and Immigration), 2014 FC 414 at para 14; *Lopez v Canada (Citizenship and Immigration)*, 2015 FC 70 at paras 21-22).

VI. Conclusion

[33] The Application is dismissed. The parties have not identified a question of general importance for certification, and none arises.

JUDGMENT IN IMM-2292-20

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed; and
2. No question is certified.

“Patrick Gleeson”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2292-20

STYLE OF CAUSE: LUISA FERNANDA CHAPETON RODRIGUEZ AND
JUAN DIEGO VILLARAGA CHAPETON AND
MARTIN VILLARAGA CHAPETON [MINORS BY
THEIR LITIGATION GUARDIAN LUISA
FERNANDA CHAPETON RODRIGUEZ] v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 17, 2021

JUDGMENT AND REASONS: GLEESON J.

DATED: NOVEMBER 29, 2021

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