



Date: 20211124

Docket: IMM-5870-20

Citation: 2021 FC 1291

Ottawa, Ontario, November 24, 2021

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

YOSUANI VARGAS HERNANDEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of a member of the Refugee Protection Division of the Immigration and Refugee Board of Canada [RPD] dated September 30, 2020, wherein the RPD determined that the Applicant's application for refugee protection pursuant to sections 96 and 97(1), respectively, of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [Act] was manifestly unfounded pursuant to section 107.1 of the Act.

[2] For the reasons that follow, I am satisfied that the RPD's determination that the Applicant's claim was manifestly unfounded was reasonable. Accordingly, the application for judicial review shall be dismissed.

II. Background and Decision at Issue

[3] The Applicant, Yosvani Vargas Hernandez, is a 32-year-old woman and citizen of Mexico.

[4] On September 21, 2018, the Applicant fled Mexico with her partner. They arrived in Canada on the same day.

[5] The Applicant and her partner filed claims for refugee protection on October 9, 2018. Pursuant to *Rule 55 of the Refugee Protection Division Rules*, SOR/2021-256, the claims were joined because the Applicant and her partner claimed they were common-law partners [Claim]. In the Claim, the Applicant is the Co-Claimant and her partner is the Principal Claimant [collectively, the Claimants].

[6] The Claimants sought refugee protection on the grounds that the Principal Claimant was born without his left arm, and as a result of that physical disability, the Claimants assert that they have faced persistent discrimination in Mexico in all walks of life, such as health care, employment, education, housing and access to social and public services. The Claimants assert that this discrimination, when taken in its entirety, rises to the level of persecution. The Claimants alleged that they were in a common-law relationship and that the Applicant has faced

discrimination because of her relationship with the Principal Claimant and because of the generalized mistreatment of women in Mexico.

[7] The Claimants allegations were set out more fully in their Basis of Claim [BOC] forms and they relied on a joint narrative from the Principal Claimant. The evidence provided by the Claimants was that they met in university in August of 2015 and began a relationship. The address history in their respective BOC forms indicates that they resided at different residences up until they came to Canada.

[8] The Claim was heard on February 28, 2020. At the hearing, the Claimants testified that they had in fact lived together from May until September of 2018 immediately prior to coming to Canada and since arriving in Canada, they have co-habited continuously.

[9] In its decision, the RPD found, in relation to the Principal Applicant, that: (a) there was no question that he had a disability and the RPD was satisfied that he had suffered serious discrimination in Mexico throughout his life; (b) he has been able to access healthcare and social programs, as well as complete primary and secondary education; (c) he has been able to obtain employment and has had access to government sponsored employment programs; (d) he did not suffer discrimination in respect of housing; and (e) there has not been a failure of state protection. The RPD found that the Principal Claimant had not suffered discrimination rising to the level of persecution and accordingly, he was not a Convention refugee nor a person in need of protection.

[10] In relation to the Applicant, the RPD found that the evidence did not support a conclusion that the Principal Claimant and the Applicant were in a common-law relationship when they entered Canada. The RPD held that a common-law partner is a defined term and requires that the individuals cohabit in a conjugal relationship for at least one year. The RPD noted that the address history for the Claimants, which they both affirmed to be complete, true and correct, listed separate addresses in Mexico up until the time that they came to Canada. While they testified at the hearing that they did cohabit for the four months leading up to their arrival in Canada, the RPD noted that this was not reflected in their respective BOC forms. While the Claimants testified that they have cohabited continuously since arriving in Canada, the RPD held that for the purpose of a joined claim, the Claimants did not have a family relationship when they entered Canada. The RPD was not persuaded that the Claimants had anything more than a boyfriend/girlfriend relationship.

[11] As a result of the RPD's finding that the Claimants were not in a common-law relationship, the RPD went on to consider whether the Applicant had a separate claim against Mexico. The RPD noted that: (a) the Principal Claimant's narrative was mostly silent on the subject of any persecution or risk of harm faced by the Applicant in Mexico; (b) the Applicant was asked at the hearing what the basis of her claim against Mexico was and she responded that it was the discrimination faced by the Principal Claimant. She testified that it was painful for her to see the way the Principal Claimant suffered and that when they were together on the street, people would stare at them and ask why she was with the Principal Claimant; and (c) the Applicant testified that she is afraid to go back to Mexico because criminal organizations know that she is with the Principal Claimant, although she acknowledged that this claim was not made in the joint narrative.

[12] The RPD held that there was no persuasive evidence that the Applicant suffered any persecution or was subject to any threats of harm or to her life. Therefore, the RPD found her claim to be manifestly unfounded.

III. Issue and Standard of Review

[13] The sole issue is whether the RPD's determination that the Applicant's claim for refugee protection was manifestly unfounded was reasonable. The parties agree that the standard of review is reasonableness [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23-24; *Nweke v Canada (Minister of Citizenship and Immigration)*, 2017 FC 242 at para 18].

[14] In assessing whether a decision is reasonable, the Court will assess whether the decision is appropriately justified, transparent and intelligible. To meet these requirements, the decision must reflect "an internally coherent and rational chain of analysis" and be "justified in relation to the facts and law that constrain the decision maker" [see *Vavilov, supra* at paras 85 and 99].

IV. Analysis

[15] A claim is manifestly unfounded pursuant to section 107.1 of the *Act* when it is clearly fraudulent. Justice Roy in *Warsame v Canada (Minister of Citizenship and Immigration)*, 2016 FC 596 at paras 30-31, succinctly sets out what is required for a claim to be "clearly fraudulent":

[30] For a claim to be fraudulent, it would be required that a situation be represented of being of a certain character when it is not. But not any misstatement or falsehood would make a refugee claim fraudulent. It must be that the dishonest representations, the deceit,

the falsehood, go to an important part of the refugee claim for the claim to be fraudulent, such that the determination of the claim would be influenced in a material way. It seems to me that a claim cannot be fraudulent if the dishonesty is not material concerning the determination of the claim.

[31] If the word “fraudulent” signals the need for a misrepresentation of the truth or a concealment of a material fact for the purpose of getting another party to act to its detriment, I would have thought that the word “clearly” would go to how firm the finding is. For instance, Black’s Law Dictionary (West Group, 7th Ed) defines “clearly erroneous standard” as “a judgment is reversible if the appellate court is left with the firm conviction that an error has been committed.” Similarly, clearly fraudulent would in my view signal the requirement that the decision maker has the firm conviction that refugee protection is sought through fraudulent means, such as falsehoods or dishonest conduct that go to the determination of whether or not refugee protection will be granted. Falsehoods that are merely marginal or are antecedent to the refugee claim would not qualify.

[emphasis added]

[16] A mere finding of negative credibility is not enough to give rise to a claim being manifestly unfounded. It is the claim itself that must be fraudulent [see *Yuan v Canada (Minister of Citizenship and Immigration)*, 2018 FC 755 at para 33].

[17] The Applicant asserts that the RPD’s finding that her claim was manifestly unfounded was unreasonable as the RPD’s concerns with respect to her claim did not meet the high threshold of being “clearly fraudulent” to be dismissed as manifestly unfounded and thus preventing her from appealing the decision to the Refugee Appeal Division. The Applicant asserts that the RPD was not faced with a clearly fraudulent claim, but rather the RPD’s concerns were based on the Applicant’s credibility and/or lack of credible evidence. The RPD’s concerns regarding the nature of her relationship with the Principal Claimant do not necessarily signal that her claim for

protection was obtained fraudulently or through deceit or dishonesty. The Applicant notes that the RPD did in fact acknowledge that the Applicant and the Principal Claimant were in a romantic relationship, such that there is “some truth” to the fact that the Applicant and the Principal Claimant were in a common-law relationship and that their relationship was not based on fraud or dishonesty.

[18] The Applicant further asserts that the RPD erred in finding that the Applicant did not have her own claim against Mexico. Given that the RPD did not deny the Principal Claimant’s claim on the basis of it being manifestly unfounded, the Applicant asserts that it is then reasonable to expect the Applicant to have faced some form of discrimination flowing from her relationship with her partner. The Applicant asserts that it is plausible that she would face some form of harassment or intimidation when appearing in public places due to the Principal Claimant’s disability and that any discrimination that the Principal Claimant faced in the workplace would negatively impact her livelihood, in addition to the generalized violence towards women in Mexico.

[19] In summary, the Applicant asserts that the RPD failed to appreciate the difference between a clearly fraudulent claim and one that is based on negative credibility findings.

[20] The Applicant further asserts that the decision is unreasonable as the RPD only provided one sentence in its finding that the claim was manifestly unfounded, which does not constitute adequate reasons.

[21] I disagree. Section 1(1) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227, provides that “common-law partner” means “in relation to a person, an individual who is cohabitating with the person in a conjugal relationship, having so cohabitated for a period of at least one year”. The clear and uncontested evidence before the RPD from the Applicants themselves is that they had not cohabitated for one year prior to arriving in Canada, yet they represented in their respective applications that they were common-law partners. Using the language from *Warsame*, the Applicant represented her relationship with the Principal Claimant as being of a certain character when it was not. This misrepresentation was material to the Applicant’s refugee claim, as it underpinned her ability to rely on the Principal Claimant’s alleged persecution/need for protection. In the absence of a common-law relationship, the Applicant was required to make out her own claim of persecution or need for protection.

[22] With respect to the RPD’s consideration of the Applicant’s separate claim, the Applicant’s claim cannot be grounded on presumptions and speculation, which is what she is urging the Court to accept as the basis for her assertion that the RPD’s determination was unreasonable. The onus was on the Applicant to put before the RPD evidence of her discrimination or need for protection, which she did not do. While the Applicant attempted to assert at the hearing a need for protection from criminal organizations, this was a new, unparticularized and unsupported claim that had not been asserted by the Applicant in her BOC form or the accompanying narrative.

[23] I would also note that at the hearing, the Applicant asserted that the Court should consider the concept of “cultural relativism” when considering the nature of the relationship between the Applicant and the Principal Claimant, arguing that in their culture, they may have considered

themselves to be common-law partners. This argument was not raised in the Applicant's memorandum of argument and thus will not be considered by the Court. In any event, I note that there is no evidence that this issue was raised before the RPD or that there was any evidence before the RPD regarding the Claimants' culture having any bearing on their misrepresentation of being in a common-law relationship.

[24] Further, I reject the assertion that the RPD failed to provide adequate reasons as to why it determined that the Applicant's claim was manifestly unfounded. The reasons must be read as a whole and when the various findings made by the RPD are considered in their totality, I find that the reasons adequately justify the manifestly unfounded determination.

[25] While the Applicant asserts that the RPD failed to appreciate the difference between a clearly fraudulent claim and one that is based on negative credibility findings, the RPD's findings regarding the lack of a common-law relationship between the Claimants and its finding in relation to the Applicant's own claim for refugee protection were based on the evidence before it (or lack thereof) and not based on any negative credibility findings vis-à-vis the Applicant.

[26] Given the Applicant's critical misrepresentation regarding the nature of her relationship with the Principal Claimant and given the complete absence of any persuasive evidence to support the Applicant's separate claim for protection, I am satisfied that the RPD's determination that the Applicant's claim was manifestly unfounded was reasonable. Therefore, the application for judicial review will be *dismissed*.

[27] Neither party proposed a question for certification and I agree that none arises.

JUDGMENT in IMM-5870-20

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The parties proposed no question for certification and none arises.

“Mandy Ayleen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5870-20

STYLE OF CAUSE: YOSUANI VARGAS HERNANDEZ v. THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

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