Federal Court  Cour fédérale

Date: 20220331

Docket: IMM-6648-20

Citation: 2022 FC 426

[ENGLISH TRANSLATION]

Ottawa, Ontario, March 31, 2022

PRESENT: The Honourable Madam Justice St-Louis

BETWEEN:

YORLADY RAMIREZ ARROYAVE
ESTEFANIA RAMIREZ ARROYAVE

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] The applicants, Yorlady Ramirez Arroyave and her minor daughter Estefania Ramirez Arroyave, are seeking judicial review of the Refugee Protection Division [RPD] decision dated November 24, 2020. The RPD found that the applicants were neither Convention refugees nor

persons in need of protection within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [the Act].

[2] In its decision, the RPD also considered the refugee protection claims of Greysy Thatiana Ramirez Arroyave and Alvaro Ivan Franco Narvaez, the sister and brother-in-law of Yorlady Ramirez Arroyave, the principal applicant in this proceeding. All of these cases are related since the claims are all based on Franco Narvaez's account. These two applicants before the RPD and the two applicants before the Court in this case will hereinafter be referred to collectively as "the applicants," as they were when they were all before the RPD.

[3] The Refugee Appeal Division [RAD] declined jurisdiction to hear the applicants' appeal of the RPD's decision against them because they came to Canada from the United States and therefore have no right of appeal to the RAD. However, the RAD heard the appeal of Greysy Thatiana Ramirez Arroyave and Franco Narvaez. On June 24, 2021, the RAD rejected that appeal and the Federal Court subsequently dismissed the application for leave and judicial review of that decision.

[4] For the reasons set out below, the applicants' application for judicial review will be dismissed.

II. Background

[5] The applicants are citizens of Colombia. On June 10, 2016, Ramirez Arroyave was granted a ten-year multiple-entry visitor visa by United States authorities, and on September 27, 2016, her minor daughter was also granted one.

[6] On October 12, 2016, Ramirez Arroyave and her daughter left Colombia for the United States and on October 14, 2016, they presented themselves at the Canadian land border at the Lacolle crossing and claimed refugee protection. At the time, Mrs. Ramirez Arroyave told Canadian authorities in Lacolle that she, her sister and brother-in-law had received threats from the criminal group *Los Urabeños*. In particular, she specified that the first threats were received on July 17, 2016, and that she herself had been kidnapped for 15 minutes on August 9, 2016. She also told Canadian authorities that she had not applied for a Canadian visa, as her sister and brother-in-law had done, because they were afraid of being denied if they applied for the visa as a group.

[7] In the Basis of Claim Form [BOC Form] she signed on October 28, 2016, Ramirez Arroyave included the account of her brother-in-law, Franco Narvaez, which is almost 7 pages long. In it, Franco Narvaez recounted, among other things, that for several years he, his wife, and Ramirez Arroyave had been active in the community in Colombia and had held dental health brigades. He stated that, starting in 2016, they had been warning youth about drug use and recruitment by the paramilitary group *Los Urabeños*. Specifically, he described four events in which they were allegedly assaulted or threatened by a group unequivocally identifying

themselves as *Los Urabeños*. These events allegedly occurred on July 17, August 9, September 13, and September 16, 2016.

[8] On December 14, 2016 and December 11, 2019, the RPD heard the refugee protection claims. On November 24, 2020, the RPD issued its decision on the status of the four applicants. However, and for the reasons stated above, the application for judicial review only concerned the files of the two applicants.

[9] In its decision, the RPD considered credibility to be central to the refugee protection claims. The RPD was of the view that the allegations underlying these claims were not credible due to several significant problems. It considered the testimony of Franco Narvaez to be rather vague and lacking in spontaneity, and noted problems in relation to (1) the *Urabeños* as agents of risk, since they did not identify themselves by that name according to the objective documentary evidence (National Documentation Package [NDP] Tab 7.15); (2) the July 17, 2016, incident central to the claim, since (a) Franco Narvaez forgot, during his testimony, that he had been the subject of death threats and that the *Urabeños* were the ones who had allegedly threatened them (b) his wife, on the other hand, testified that they had received death threats at that time; (c) the threat not to press charges, substantiated during his testimony, did not appear in his detailed narrative of almost 7 pages; (3) Franco Narvaez omitted from his BOC Form that his father had changed his residence to protect himself; (4) the behavior of the applicants since (a) they participated in a charity event on August 6 despite the threats; and (b) they delayed leaving their country, especially since the adult applicants all had United States visas prior to the initial threats; and (5) the alleged assassination attempt on two of the applicants on

September 13, 2016, since the testimony of Franco Narvaez was tentative, and that he was unable to recall whether there had been any witnesses. The RPD noted the explanations provided by the applicants in relation to its concerns and found them to be insufficient.

[10] The RPD also noted that these claims were similar to other Colombian refugee protection claims based on similar facts. Because the RPD did not believe the allegations underlying the claims, it gave no weight to the documents submitted by the applicants to support their allegations. It considered these documents to be truthful, but based on fictitious facts.

[11] The RPD ultimately concluded that the applicants did not meet their burden and therefore were neither Convention refugees nor persons in need of protection.

III. Parties' positions

[12] The parties agreed that the standard of reasonableness should be applied.

[13] The applicants generally alleged that the RPD made an unreasonable decision, based on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (paragraph 18.1(4)(f) of the *Federal Courts Act*, RSC 1985, c F-7). The applicants argued that (1) the RPD failed to analyze the case under review in a judicious and sensitive manner and did not appear to be responsive to the grounds raised; (2) the RPD demonstrated bias and prejudice against the applicants by referring to other similar cases and should have recused itself; (3) the RPD's summary of the facts lacked rigour; (4) the testimony given by the applicants was beyond reproach and trustworthy; (5) Mr. Franco Narvaez admitted

that he was nervous at the beginning of the hearing and had some difficulty remembering dates and circumstances; (6) the *Urabeños* group has been named in different ways over the years according to the documentary evidence: the RPD favoured unbiased documentary evidence from credible sources rather than giving credence to the evidence submitted by the applicants (Applicants' Memorandum at para 18) and the RPD incorrectly interpreted the evidence since there was no contradiction between the objective evidence and the testimony; (7) the discrepancy between the narrative of the BOC Form and the testimony of the applicants in relation to the event of July 17 was a trivial, secondary and immaterial fact; (8) the omission in relation to Franco Narvaez's change of residence was secondary and immaterial; and (9) the applicants' conduct was not inconsistent with their fear in connection with the 2016 event and their failure to claim protection in the United States was justified.

[14] The applicants cited the Court's case law on (1) credibility and argued that the RPD should have given them the benefit of the doubt, that evidentiary requirements should not be construed too narrowly, that the court should not focus on less credible points, and that there is a presumption that the facts alleged are true; and on (2) the delay in making a refugee protection claim or in leaving the country, which is not in itself a determinative factor.

[15] The respondent essentially replied that the RPD's decision was well founded in fact and law, was reasonable, and contained no error that would warrant the Court's intervention.

IV. Decision

[16] I agree with the parties that the RPD's decision must be reviewed under the standard of reasonableness. Thus, the applicants bear the burden of demonstrating the unreasonableness of the decision.

[17] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para. 85). The reviewing court must consider "the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). The reviewing court must consider "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at para 99, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47 and 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

A. *Credibility findings were reasonable*

(1) The fact that the criminal group identifies itself as the *Urabeños*

[18] As noted by the Minister of Citizenship and Immigration [the Minister], the RPD did not believe that the applicants had any problems with individuals belonging to the group commonly referred to as the *Urabeños* since the group does not refer to itself by that name. The RPD relied on the NDP's objective documentary evidence on Colombia contained at Tab 7.15, and dated

March 6, 2015, which states that “the *Urabeños* call themselves the Gaitanist Self-defense Forces of Colombia”. The RPD noted the explanations of the applicants, who mentioned that the group had taken on several names throughout its history and that it is under the name of the *Urabeños* that it is best known. The RPD found these explanations unsatisfactory in light of the documentary evidence. Before the Court, the applicants themselves characterized the documentary evidence relied upon by the RPD as impartial and credible. They cited excerpts from it in paragraphs 17 to 35 of their memorandum, but failed to cite the relevant passage cited by the RPD. Moreover, the excerpts identified by the applicants did not demonstrate that the RPD’s conclusion was unreasonable. The issue was not whether or not the criminal group has ever gone by other names, but what name the group calls itself.

[19] The documentary evidence confirmed the RPD’s conclusion and the RPD can assess the sufficiency of the evidence submitted and select the evidence that is most consistent with reality. As Justice Roussel reiterated in *Singh v Canada (Citizenship and Immigration)*, 2019 FC 727 at paragraph 10, while an applicant may disagree with the panel’s findings, it is not the role of this Court to reweigh and balance the evidence in order to reach a conclusion that would be favourable to the applicant.

[20] The applicants have not convinced the Court that the RPD’s conclusion was unreasonable in light of the documentary evidence on which it relied, evidence which the applicants themselves acknowledged to be objective and impartial (Applicants’ Memorandum at para 18).

(2) July 17, 2016 event

[21] The applicants did not deny the contradiction in the testimony and the omissions, but they alleged that this was a trivial and secondary fact. On the contrary, it was reasonable to conclude that the event of July 17 was rather a central point of the claim since it was the starting point of the issues raised by the applicants. The RPD could reasonably expect that the applicants would remember the details and that their testimony would be consistent. Moreover, the RPD could reasonably conclude that the death threats were not trivial.

[22] In this case, as a result of its review of the record, the RPD noted omissions and implausibilities between the applicants' testimony and the narrative included in their BOC Form and between the applicants' own testimony, and the RPD did not believe their narrative.

[23] An applicant who challenges the RPD's credibility analysis has a difficult burden of proof to meet (*Singh Gill v Canada (Citizenship and Immigration)*, 2011 FC 447 at para 8; *Nijjer v Canada (Citizenship and Immigration)*, 2009 FC 1259 at para 14; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 at para 15).

[24] In this case, the RPD provided detailed reasons and explained why the applicants' credibility was tainted. The Court must give deference to the RPD's assessment of a refugee claimant, and issues of credibility are central to its jurisdiction.

[25] As described below, I am of the view that the applicants' arguments express their disagreement with the RPD's assessment of the evidence and that they are, in short, asking the

Court to choose their opinion over that of the RPD. This is not the role of this Court on judicial review. The role of the Court is not to determine whether the proposed interpretations might be reasonable, but rather to determine whether the RPD's interpretation was reasonable.

[26] In this case, the applicants have not convinced the Court that the RPD's findings were unreasonable.

(3) Franco Narvaez's failure to mention his father's move in his BOC Form

[27] It is well established that all material facts of the account must be included in the BOC Form and that failure to include them can be fatal to the credibility of a claim for refugee protection (*Occilus v Canada (Citizenship and Immigration)*, 2020 FC 374 at para 25; *Toussaint v Canada (Citizenship and Immigration)*, 2019 FC 267; *Avrelus v Canada (Citizenship and Immigration)*, 2019 FC 357 at para 14; *Basseghi v Canada (Citizenship and Immigration)*, [1994] FCA No. 1867 at para 33).

[28] Franco Narvaez's father changed his residence to protect himself; he did not simply change his address. It was reasonable for the RPD to consider that this fact was not trivial and that the failure to mention it in the BOC Form contributed to undermining the applicants' credibility. The applicants have not convinced me that this conclusion was unreasonable.

(4) Failure to describe the incident of September 13, 2016

[29] In *Valentin v Canada (Citizenship and Immigration)*, 2019 FC 64 at para. 10, Justice LeBlanc found that an applicant's stress does not justify the contradictions or explain his inability to recall significant incidents in his account at his RPD hearing or when completing his forms. The September 13 incident was a significant incident in the applicants' account, and it was reasonable for the RPD to have held the witness accountable for his hesitant testimony in this regard.

[30] Finally, as to Franco Narvaez's inability both to specify the presence or absence of witnesses to this incident and to describe the incident, Justice Roy reiterated in *Jean v Canada (Citizenship and Immigration)*, 2020 FC 838 at paragraph 17 [*Jean*] that the RPD may draw adverse inferences about the credibility of a applicant based on implausibility, common sense and reason. It was not unreasonable for the RPD to expect Franco Narvaez to have noted the presence or absence of witnesses given the other elements he had noted about the incident.

[31] The applicants have not convinced me that the RPD erred in reaching its conclusions, given the evidence.

B. *Conclusion on applicants' behaviour*

[32] The RPD may, in assessing the alleged fear, consider an applicant's conduct, because conduct that shows an absence of fear of persecution will taint his or her credibility. The RPD noted two elements: (1) the applicants' contribution to charitable activity despite threats; and (2) the length of the delay before the applicants left the country.

[33] In *Jean*, at paragraphs 11 and 16, the Court found it appropriate to consider an applicant's failure to take steps to protect himself or herself (*Forvil v Canada (Citizenship and Immigration)*, 2020 FC 585 at para 56; *Noël v Canada (Citizenship and Immigration)*, 2020 FC 281 para 26; *Giraldo Cortes v Canada (Citizenship and Immigration)*, 2015 FC 516 at para 21; *Chechkaliuk v Canada (Citizenship and Immigration)*, 2016 FC 1415). In addition, the Court has confirmed that an applicant must demonstrate both the subjective and objective components of their fear *(Jean-Baptiste v Canada (Citizenship and Immigration)*, 2018 FC 285 at para 15).

[34] In this case, the RPD reasonably concluded that the conduct of the applicants contributed to undermining the credibility of their story and the alleged fear of persecution.

[35] Moreover, the presumption of veracity raised by the applicants and cited in *Maldonado v Canada (Minister of Employment and Immigration)*, [1980] 2 FC 302 (FCA) [*Maldonado*] is not conclusive. It simply establishes the principle that "[w]hen an [applicant] swears to the truth of certain allegations, this creates a presumption that those allegations are true, unless there be reason to doubt their truthfulness" [emphasis added] (*Maldonado* at para 5).

[36] Given the inconsistencies, omissions and contradictions in this case, the RPD could reasonably have found that the presumption of veracity had been rebutted.

C. *Unsubstantiated allegations of a breach of procedural fairness and bias related to an RPD matter*

[37] The applicants allege that the RPD failed to analyze the refugee protection claim in a meaningful and sensitive manner and did not appear to be responsive to the grounds raised by the applicants, which amounted to an allegation of a breach of procedural fairness.

[38] The applicants have not convinced me that this allegation has merit. First, the RPD is presumed to have considered all of the evidence before it (*Douillars v Canada (Citizenship and Immigration)*, 2019 FC 390 at para 18) and second, a reading of the RPD's reasons does not allow me make the finding that the applicants would prefer. In this regard, I agree with the Minister's position, elaborated at paragraphs 71 to 80 of his memorandum.

I reach the same conclusion in relation to the allegation of bias, raised for the first time before the Court, and note in this regard the words of the Federal Court of Appeal in paragraph 14 of *Mohammadian v Canada (Citizenship and Immigration)*, 2001 FCA 191, which apply in this case.

JUDGMENT in IMM-6648-20

THIS COURT'S JUDGMENT is as follows:

1. The application for judicial review is dismissed.

2. No question of general importance is certified.

3. No costs are awarded.

"Martine St-Louis"
Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT

SOLICITORS OF RECORD

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