Federal Court  Cour fédérale

Date: 20221013

Docket: IMM-6618-21

Citation: 2022 FC 1399

Ottawa, Ontario, October 13, 2022

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

JAIME ERNESTO CUBIAS
EVELYN ELIZABETH AMAYA DE CUBIAS
DIEGO ALEJANDRO CUBIAS AMAYA
JIMMY DANIEL CUBIAS AMAYA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of a Pre-Removal Risk Assessment ("PRRA") decision, where the Officer rejected the PRRA application.

II. Background

[2] The Applicants are a family of four from the San Salvador region of El Salvador, including two children. Jaime Ernesto Cubias is the Principal Applicant and father of the family.

[3] The family left their home and sought refuge in Canada in November 2016 after being threatened by Surenos18th Street ("18th Street") gang members. The 18th Street is a gang, or maras, with significant control in El Salvador. The family first dealt with 18th Street gang members in early November 2015. Three members showed up at their home and wanted the father to drive them around in his car. Since the father was not home, the members told the mother that they would return another day.

[4] On the second occasion when the 18th Street members came back the father was, again, not present. However, they returned later that day and were able to speak with the father, asking to use his car. The father told them that his vehicle was not working. Gang members returned to the home another two to three times seeking the father's help to drive them in his car.

[5] Every time gang members returned to the home, the father told them that he could not assist because his car remained broken. The gang members would then kick his vehicle, claim he was lying, and warn the father that he had better leave the place. Gang members threatened to do something "bad" to the father and his family.

[6] The Principal Applicant was threatened and told to “leave the neighbourhood or face the consequences” and was also warned that “if he or his family returned they would be killed.”

[7] As a result of these threats, and out of fear, the family reported the incidents to the police in November of 2015. They then fled their home.

[8] The Principal Applicant could not identify a reason for why he had been approached by 18th Street members. He was not working a high risk job that typically attracts gang attention. As a whole, the evidence points to the father being randomly approached by the 18th Street gang members, likely because he owned a vehicle and lived nearby.

[9] The Principal Applicant fled to the United States in November of 2015. The mother and children stayed at her family’s residence in Apopa for approximately six months, before reuniting with the father in the United States in May 2016. The family of four arrived in Canada on November 28, 2016, where they made a refugee claim for refugee protection at the Fort Erie border.

[10] When the mother and children were living in Apopa, they did not encounter or receive any communications from gang members. Since leaving their neighbourhood in November of 2015, the family has not seen or heard directly from the 18th Street gang, nor any other gang.

[11] The Applicants' refugee claim was rejected on February 16, 2017, where the RPD found the family had a viable internal flight alternative ("IFA") in Apopa and that the 18th Street gang was not in active pursuit of the family.

[12] The family applied for a PRRA on January 16, 2019 and included new evidence. This new evidence consisted of a package of six handwritten letters from family that the Applicants say supported the fact that the 18th Street gang was still actively looking for them. There was no further evidence submitted over the two-year period between the applications submission with the letters and when the decision was made on August 26, 2021.

III. Issue

[13] The issue is whether the decision is reasonable.

IV. Standard of Review

[14] The standard to be applied to the substance of an Immigration Officer's decision is reasonableness as described in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 23, 25, 99 [*Vavilov*].

V. Analysis

A. *Alleged Factual Errors*

[15] The Applicants argue that the Officer committed factual errors when assessing the evidence. They contend that the Officer erred by accepting the Applicants' six letters as evidence while finding the content insufficient and of limited probative value. The Applicants challenge two of the reasons provided by the Officer in relation to the letters.

[16] First, the Applicants argue the Officer made an adverse inference when considering the age of the letters. The Applicants submit that it took over two years for the PRRA file to be allocated and a decision to be made with respect to their application, which caused the gap in time. The Applicants contend that, although more than two years had passed since the letters were produced, they should not be required to update their evidence while waiting for the file to be allocated and a decision to be rendered, nor should this result in an adverse inference being made against them.

[17] Second, the Officer noted that the letters were handwritten in Spanish, signed, unsworn, and accompanied by an uncertified English translation of unknown origin. The Applicants explain that there was administrative error when the PRRA application was submitted: an affidavit from a "Carmen Rodriguez" was not included in the file submission. The Applicants argue that, if the Officer was concerned with the veracity of the translations, they could have reached out to counsel. However, the Officer accepted the content of the documents and corresponding translations, administrative error included. The Applicants submit that, by

choosing to accept the letters as new evidence, the Officer accepted the content and translations. Overall, the Applicants contend that the Officer's rationale is insufficient, the Officer's reasons are unclear as to what is being accepted from the letters. Therefore, the Applicants argue that the Officer made a reviewable error.

[18] I find no reviewable error. In assessing the forward risk, the Officer listed each of the letters and their writer's relationship to the Applicants. Then the Officer described the letters as follows:

> Each of the letters bear dates of January 7 or 8, 2019. The letters are handwritten in Spanish, signed, unsworn, and accompanied by an uncertified English translation of unstated provenance. Each letter is submitted with a copy of the authors' identification indicating their residence in Apopa, the IFA prescribed by the RPD, and where the RPD noted in its decision in February 2017, itself fifteen months after the last started interaction between the clients and their agents of harm, that "three of the claimants already lived … for several months without problems.

[19] The Officer set out in detail excerpts from the letters. Finally the Officer summarized, "[c]ollectively, the letters allege incidents of harassment, intimidation, and assault by individuals stated to be inquiring about the whereabouts of the applicants, and threatening them should they return to El Salvador." The Officer's reasons explain how they treated the evidence: "[t]he letters lack specificity with regard to the extent and chronology of these incidents."

[20] This is reasonable given the lack of detail in the letters. Despite the Applicants' argument at the hearing that at least some of the letters describe incidents, overall when the letters are reviewed they are vague. Therefore, this finding is reasonable. It was also reasonable for the

Officer to conclude that none of the alleged assaults were reported to the authorities and accordingly that the letters are not supported by corroborating evidence.

[21] The Officer concludes that the letters:

> …are of insufficient probative value to demonstrate that the 18th street gang, whose last interaction with the clients was in November 2015 and were not indicated to have any interactions through February 2017 (as indicated by the RPD in its decision of the same date), continues to actively pursue the clients in the present day, close to six years later, in the IFA region prescribed by the RPD where the clients are stated in the RPD decision to have lived for a period of six months without issue...

[22] The Applicants repeatedly blur the line between accepting and weighing evidence. The Officer chose to accept the letters as evidence. This does not mean that the Officer is required to consider that evidence sufficient.

[23] As stated by the Respondent, the onus falls on the Applicants to introduce sufficient evidence. There is no corresponding PRRA Officer duty to seek additional evidence or make further inquiries: *Borbon Marte v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 930 at paragraphs 39-40. The Officer's chain of reasoning is not impacted by the Applicants' incomplete filings nor the accuracy of the translations as alleged. The reasons are clear and set out exactly why the letters are given insufficient probative value.

[24] Applicants have the onus to put their best foot forward when presenting their case: *Rahmatizadeh v Canada (Minister of Employment and Immigration)*, 48 ACWS (3d) 1427, [1994] FCJ No 578 (QL) at paragraph 10. Although applicants are not expected to continually

update their application *per se*, it is not unreasonable for applicants to submit updates if incidents occur before the PRRA is released, even though they do not know when it will be determined. Applicants who fail to provide updates do so at their own peril, especially in light of the fact that a PRRA takes into account sections 96 and 97 risks.

[25] Regardless, on the issue of the age of the letters, I am mindful that the Applicants did not argue there was new evidence of threats, after the letters were submitted, but rather that the Officer should not have assigned little probative value due to the letters' age. When the Officer's decision is reviewed, it is clear that it uses both the timeline of the RPD decision and the letters in their assessment of sections 96 and 97. This is an assessment of the forward risk.

[26] The Applicants also claim that the Officer contradicted themselves when referring to the mother and childrens' half-year residency in Apopa.

[27] The Applicants hyper analyze the language used by the Officer in their reasons. This is because the Officer does not unequivocally state that the "wife and children" *alone* lived in Apopa for six months, whereas the husband almost immediately left for the United States. The Applicants reproduce four segments of the Officer's reasons noting this minor inconsistency, which they allege amounts to an improper consideration of the facts of the case.

[28] However, the Officer's reasons clearly demonstrate that they were alert to this fact. The background section of the decision states that "[t]he adult male applicant relocated to the United

States in November 2015, with the three remaining applicants following in May 2016…" The Applicants themselves note this.

[29] This is not a contradiction. Simply because the Officer did not state each and every time that the Principal Applicant had relocated earlier does not render the decision unreasonable as it is inconsequential to the actual reasons of the PRRA refusal.

B. *Veiled Credibility Findings*

[30] The Applicants argue that the Officer made veiled credibility findings, particularly with respect to the letters. The Applicants make a number of arguments, which they relate to the credibility of the evidence, including the following:

- the Officer lumps the letters into one analysis and dismisses them simultaneously without providing a clear reason on each separate letter;
- the Officer employs general phraseology in finding the evidence insufficient;
- the Officer finds the content of the letters implausible without providing a plausibility analysis; and
- the Officer critiques the validity of the documents and the veracity of the events detailed therein.

[31] These arguments amount to a "line-by-line treasure hunt for error" that *Vavilov* guards against (*Vavilov* at para 102 citing *Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper, Ltd*, 2013 SCC 34 at paragraph 54. Reasons must be read in light of the record and with due sensitivity to the administrative setting in which they

were given: *Vavilov* at paragraph 91. Perfection is not the standard. The Officer's reasons allow this Court to identify an internally coherent chain of reasoning in light of the legal and factual constraints.

[32] The Applicants elaborate upon one of the above-listed arguments: the plausibility finding. The Applicants argue that plausibility findings must be made only in the clearest of cases and an officer's inferences must be reasonable, with clearly set out reasons. The Applicants contend that the letters detail violence and threats related to the Applicants indirectly (via their family members), which demonstrate that gang members are still looking for the Applicants. They conclude that the Officer made a veiled credibility finding based on an implausibility finding under the guise of insufficient evidence.

[33] Counsel for the Applicants filed a case the morning of the hearing: *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14. Counsel highlighted the following passage in her submissions:

> [29] In the immigration context, however, it is preferable to distinguish probative value and weight. Doing so reveals what are credibility concerns. Thus, weight is a function of credibility and probative value or, if one likes to see this in the form of an equation, weight = (credibility) x (probative value). It follows that weight can only be assessed as a function of credibility and probative value. In other words, a decision-maker cannot reach a conclusion regarding weight without having previously assessed credibility or probative value or both.
>
> [Emphasis added]

[34] Counsel referred to the "equation" embedded in this paragraph as if it were a legal test that must be followed when ascertaining the weigh of evidence. I do not find this to be a fair

assessment of the proposition embedded in this case, nor is it determinative in the case at hand. These determinations cannot be rendered down to a simple formula and a review of the evidence shows that the reasons given by the Officer are reasonable.

[35] Ultimately, the Applicants allege that the Officer did not engage with the evidence, on a fact by fact basis, which resulted in veiled credibility findings. In other words, they allege that the Officer failed to identify the specific details of the letters that were accepted or rejected, which amounted to a veiled credibility finding. The Applicants argue that the Officer treated the letters, which detail diverse perspectives, as a single piece of evidence with minimal probative value.

[36] Where an officer assesses the truthfulness and reliability of the evidence, they are assessing the evidence's credibility: *Jystina v Canada (Citizenship and Immigration)*, 2020 FC 912 at paragraph 22 [*Jystina*]. However, a decision-maker can examine evidence and find it unpersuasive, without making a credibility determination. In *Jystina*, the Court agreed with the officer's conclusion that the nature and quality of the evidence was insufficient to discharge the applicant's burden of proof. This is also true in the case at hand.

[37] In *Jystina*, the Court references *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paragraph 44 [*Ferguson*], which provides a summary of the interplay between weight, sufficiency, and credibility. In *Ferguson*, Justice Zinn states, "[e]vidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to

have probative value" (at para 27). All of the letters submitted by the Applicants are authored by the mother and father's immediate family members, none of which are corroborated. This proposition bolsters the Officer's position – that evidence tendered by a party with a personal interest can be examined first for its weight and should be corroborated to have probative value.

[38] In the case at hand, the Officer did not make a determination as to how "believable" or credible the letters were. The Officer looked at the nature and quality of the evidence and allocated weight to the evidence considering these factors. The Officer did not critique or question the testimony outlined in the letters. The Applicants argue that the Officer lumped the letters together and dismissed them all without providing a clear reason – this is not a credibility finding. The Officer acknowledged that the letters indicated interactions of harassment, intimidation, and assault.

[39] However, the Officer took issue with the vague, unspecific extent, and chronology of these incidents. The Officer noted that none of the letters disclose whether the incidents were reported to authorities and there was no corroborating evidence supporting the claims, such as police reports. Therefore, the Officer found that the letters were of insufficient probative value. This is a reasonable evaluation. Furthermore, I would dismiss the plausibility argument made by the Applicants seeing as the Officer did not comment on plausibility over the course of their findings. Therefore, the Officer did not make any veiled credibility findings.

[40] No question for certification was put forward and none arose from the arguments.

JUDGMENT IN IMM-6618-21

THIS COURT'S JUDGMENT is that:

1. This matter is dismissed;

2. No question is certified.

"Glennys L. McVeigh"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Chelsea Jaques	FOR THE APPLICANTS
Camille N. Audain	FOR THE RESPONDENT

SOLICITORS OF RECORD:

STEWART SHARMA HARSANYI Calgary, Alberta	FOR THE APPLICANTS
Attorney General of Canada Edmonton, Alberta	FOR THE RESPONDENT