Date: 20230720

Docket: IMM-8405-22

Citation: 2023 FC 987

Ottawa, Ontario, July 20, 2023

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

PERLA JANISSE CORTEZ ESCOBEDO
JORGE HERNANDEZ GOMEZ

Applicants

and

THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1]   The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD] of the Immigration and Refugee Board, dated August 3, 2022, in which the RAD confirmed the decision of the Refugee Protection Division [RPD] that the Applicants were not Convention refugees nor persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[2]   The Applicants assert that the RAD's decision was unreasonable on the basis that: (a) the RAD erred in its assessment of the credibility of the Principal Applicant; and (b) the RAD erred by failing to conduct its own independent analysis of the record.

[3]   For the reasons that follow, I am not satisfied that the Applicants have demonstrated that the RAD's decision was unreasonable and accordingly, the application for judicial review shall be dismissed.

I.   **Background**

[4]   The Principal Applicant, Perla Janisse Cortez Escobedo, and her spouse Jorge Hernandez Gomez, the Associate Applicant, are citizens of Mexico. The Applicants claim that they fear the organized crime group known as the Jalisco New Generation Cartel [CJNG].

[5]   In the narrative attached to their Basis of Claim [BOC] form, the Applicants state that in March of 2018, the Applicants applied for and received a business loan with a company called Mundo Facil. The Applicants believed that Mundo Facil was a legitimate financial institution.

[6]   In early February of 2019, a Mundo Facil debt collector called and informed the Associate Applicant that their loan's interest rate would be increasing. The same day, the Applicants heard a rumour that a local fisherman – who also had a loan from Mundo Facil – had also had his loan's interest rate unjustifiably increase.

[7]   One week later, in mid-February of 2019, the local fisherman was robbed of a significant amount of money and murdered. As a result, the Applicants state that they were concerned for their safety. The Principal Applicant attended the Mundo Facil office to discover that it had suddenly closed.

[8]   The Principal Applicant attended the Mundo Facil office once more and saw that its advertisements had been taken down and the office had effectively disappeared. She asked a person in the area about Mundo Facil, and the person replied that there had never been a Mundo Facil office there. The Applicants state that they became afraid that they were being extorted.

[9]   The Applicants were subsequently accosted by men at a gas station. The Principal Applicant states that she had previously seen the men's car outside her workplace. The men robbed the Applicants and told them they had an outstanding account with them. The Applicants state that they feared for their lives and the life of their daughter (who remains in Mexico).

[10]   On February 22, 2019, the Applicants attended a police station to report the debt collectors of Mundo Facil. The police informed the Applicants that this was a civil case involving a debt and as such, there was nothing the police could do. In their narrative, that the Applicants stated that the debt collectors were members of the CJNG, although the Applicants did not state how they became aware of this. In their narrative, the Applicants also made reference to a criminal organization named 'Drop to Drop' who they assert persecuted them, but provide no explanation as to how this group is related to the CJNG or how they became aware of this information.

[11]   The Applicants state that they fled Mexico and came to Canada on July 2, 2019 following incidents of extortion and threats to their lives from the CJNG. After their arrival in Canada, the Applicants state that they were informed that the debt collectors had destroyed their business and were threatening people to obtain information about their whereabouts.

[12]   The Applicants made a refugee claim in November of 2020.

[13]   In its decision dated February 21, 2022, the RPD rejected the Applicants' claim for protection. The determinative issue was the Applicants' credibility. The RPD found that the Principal Applicant's testimony was evasive, confused and inconsistent. The RPD found that the presumption of truthfulness was rebutted, as the Applicants failure to provide documentation of the loan and the material inconsistencies and omissions between the Principal Applicant's BOC narrative and testimony were not reasonably explained. These material inconsistencies included the timing of the fisherman's death, the incident at the gas station and – crucially – when and how the Applicants learned that they were being extorted by the CJNG. In addition, the RPD found that the Applicants did not reasonably explain their delay in seeking protection in Canada.

[14]   The Applicants appealed the RPD's decision to the RAD, arguing that the RPD displayed a zeal to find microscopic inconsistencies about tangential issues that were not central to their allegations and misapprehended some of the Principal Applicant's testimony. The Applicants argued that the inconsistencies were minor and that the Principal Applicant was extremely nervous when testifying.

[15]   In its decision dated August 3, 2022, the RAD upheld the RPD's findings. The RAD was of the view that the RPD did not err in finding that the Principal Applicant's testimony was inconsistent with her BOC narrative and with key elements of the Applicants' allegations. The RAD agreed that the Applicants were neither Convention refugees nor persons in need of protection.

II.   Issues and Standard of Review

[16]   The sole issue for determination is whether the RAD's decision was reasonable.

[17]   When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adenjij-Adele v Canada (Minister of Citizenship and Immigration)*, 2020 FC 418 at para 11].

III.   Analysis

[18]   The Applicant asserts that the RAD erred in its credibility assessment of the Principal Applicant when it found that: (a) the Principal Applicant's testimony about how the Applicants

learned that the CJNG was involved was evasive; (b) there were inconsistencies in the Principal Applicant's testimony regarding the fisherman's death; (c) the Principal Applicant omitted from her BOC the threats to the Applicants' lives during the gas station incident, without a reasonable explanation for the omissions; and (e) the Applicants had failed to provide corroborative documentation about their loan agreement with Mundo Facil, without a reasonable explanation for the absence of such documentation.

[19]   In considering the Applicants' assertions, it must be kept in mind that credibility findings are part of the fact-finding process and are to be given significant deference upon judicial review. This Court must refrain from impermissibly re-weighing and reassessing the evidence considered by the RAD absent exceptional circumstances [see *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6; *Vavilov, supra* at para 125].

[20]   Having reviewed the evidence before the RAD, I am satisfied that the RAD's determination regarding the credibility of the Principal Applicant was reasonable. It was open to the RAD to consider the Principal Applicant's shifting and contradictory accounts as to the key aspects of the Applicants' narrative. I find that the RAD's articulation of the various inconsistencies and contradictions in the evidence presented by the Applicants related to the central allegations of extortion by the CJNG was reasonable. The RAD considered the argument concerning the Principal Applicant's nerves and reasonably found that it did not explain her inability to answer simple questions that were asked (and clarified several times) and that engaged key elements of her claim.

[21]   Moreover, I see nothing unreasonable regarding the RAD's determinations concerning the absence of a reasonable explanation for the lack of any documentation related to the loan from Mundo Facil (including documents that would have shown the use made of the borrowed funds) and for the omission of the threat to the Applicants' lives during the gas station incident.

[22]   The Applicants further assert that the RAD neglected to consider the plausibility of an oral loan agreement with Mundo Facil and failed to give the corroborating evidence from the landlord regarding the loan the weight that it deserved. Contrary to the assertion of the Applicants, the RAD did consider the plausibility of an oral agreement and rejected it, but nonetheless went on to consider the evidence that it had before it regarding the loan assuming that an oral agreement with Mundo Facil was plausible. With respect to the corroborating evidence from the landlord, it is not the role of the Court on an application for judicial review to re-weigh the evidence that was before the RAD.

[23]   I find that the Applicants' assertion that the RAD failed to conduct an independent assessment is without merit. Having reviewed the RAD's reasons, I am satisfied that the RAD provided its own independent analysis of the Applicants' narrative and testimony. This is particularly apparent from the fact that the RAD provided additional examples of inconsistencies in the Principal Applicant's evidence that had not been highlighted by the RPD. Simply because the RAD's findings are consistent with, or arrived at, for reasons that were also identified by the RPD does not mean that the RAD failed to conduct an independent assessment [see *Sinnaraja v Canada (Citizenship and Immigration)*, 2018 FC 274 at paras 7-9; *Hassan v Canada (Citizenship and Immigration)*, 2019 FC 1623 at para 20-21].
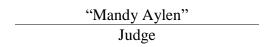
IV. **Conclusion**

[24] For the reasons stated above, I find that the Applicants have not demonstrated that the RAD's decision was unreasonable. Accordingly, the application for judicial review shall be dismissed.

[25] The parties propose no question for certification and I agree that none arises.

JUDGMENT in IMM-8405-22

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 Aylen"
Judge

DOCKET: IMM-8405-22

STYLE OF CAUSE: PERLA JANISSE CORTEZ ESCOBEDO, JORGE HERNANDEZ GOMEZ v MINISTER OF CITIZENSHIP AND IMMIGRATION

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APPEARANCES:

Alexander Fomcenco   FOR THE APPLICANTS

Andrea Mauti   FOR THE RESPONDENT

SOLICITORS OF RECORD:

Fomcenco Law   FOR THE APPLICANTS
Toronto, Ontario

Attorney General of Canada   FOR THE RESPONDENT
Toronto, Ontario