

Federal Court



Cour fédérale

**Date: 20230803**

**Docket: IMM-9563-21**

**Citation: 2023 FC 1069**

**Montréal, Quebec, August 3, 2023**

**PRESENT: Mr. Justice Gascon**

**BETWEEN:**

**ARMANDO ANTONIO TACOA VELJOVIC  
ANA ISABEL VILORIA LEZAMA  
GUILLERMO ENRIQUE TACOA VELJOVIC**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The applicants, Mr. Armando Antonio Tacoa Veljovic, his wife Ana Isabel Viloría Lezama, and his brother Guillermo Enrique Tacoa Veljovic [together, the Tacoa Veljovics], are citizens of Venezuela. They are seeking judicial review of a decision rendered on November 30, 2021 [Decision], whereby the Refugee Protection Division [RPD] dismissed their claim for

refugee protection pursuant to section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RPD was concerned with the Tacoa Veljovics' lack of credibility.

[2] The Tacoa Veljovics are asking the Court to set aside the Decision and to refer the matter back to the RPD for a new hearing. They submit that the RPD breached their right to procedural fairness, erred in its assessment of the evidence, and wrongly determined that their application was manifestly unfounded.

[3] For the following reasons, the Tacoa Veljovics' application for judicial review will be dismissed. Having considered the Decision, the evidence before the RPD, and the applicable law, I conclude that the Decision is reasonable and that the evidence amply supports the RPD's conclusions regarding the Tacoa Veljovics' lack of credibility. I am satisfied that the RPD's reasons have the qualities that make its analysis logical and consistent in relation to the relevant legal and factual constraints. I also do not find any breach of procedural fairness in the treatment of their refugee claim. In sum, the Tacoa Veljovics have not identified any serious shortcomings in the Decision that would warrant the Court's intervention.

## **II. Background**

### **A. *The factual context***

[4] In their narratives, the Tacoa Veljovics alleged several incidents that would have occurred in Venezuela due to their membership in Primero Justicia, an opposition political party in Venezuela, and that gave rise to their fear of persecution.

[5] The Tacoa Veljovics claim that, on multiple occasions between December 2013 and March 2015, they were threatened by the Tupamaros, by members of the military, and by members of SEBIN — the premier intelligence agency in Venezuela — during their volunteering activities for Primero Justicia.

[6] On April 15, 2015, Guillermo would have been kidnapped by members of SEBIN because of his support to Primero Justicia. He subsequently left for Canada on a tourist visa on May 9, 2015. Guillermo returned to Venezuela in February 2016, supposedly to help his brother Armando with a medical issue, and returned to Canada on June 13, 2016.

[7] On November 2, 2016, Armando and his wife Ana would also have been kidnapped and held for several days by members of SEBIN.

[8] On November 6, 2016, Guillermo travelled back to Venezuela to help look for his brother and sister-in-law. Armando and his wife Ana were eventually released on November 8, 2016. Armando indicated that he travelled to Curacao on November 9, 2016, and returned to Venezuela on November 16, 2016, while his wife stayed in Venezuela with Guillermo. However, Ana's passport indicates that she had also travelled to Curacao on these dates.

[9] In the meantime, on November 11, 2016, despite Armando and his wife being out of the country, Guillermo claims that they had all been attacked while travelling together. Guillermo would have been kidnapped after the attack, but said he escaped several hours later.

[10] Guillermo left Venezuela again on November 22, 2016, because he apparently had knowledge of his imminent arrest by the Venezuelan authorities. He applied for a student visa in Canada in March 2017.

[11] Between August 2017 and June 2019, Armando and his wife allegedly suffered further attacks from different groups because of their political activities.

[12] On July 25, 2019, Armando and his wife were allegedly kidnapped again by members of SEBIN and the Tupamaros. On that occasion, they would have been tortured and Ana would have been sexually assaulted.

[13] In the meantime, and throughout the years, Armando and his wife travelled to Europe, Colombia, the United States, Curacao, Mexico, and Aruba. On each occasion, they returned to Venezuela despite the threats and the attacks they allegedly suffered.

[14] Ultimately, after the July 2019 incident, Armando and his wife left for the United States before joining Guillermo in Canada. They all submitted a claim for refugee protection later in 2019.

**B. *The RPD Decision***

[15] In its Decision, the RPD found that the determinative issue was the Tacoa Veljovics' credibility. The RPD found that the evidence they had provided contained numerous omissions, inconsistencies, and discrepancies that were not reasonably explained.

[16] First, the RPD held that the Tacoa Veljovics' multiple trips in and out of Venezuela between 2014 and 2016, coupled with the delay of multiple years after the first attacks before seeking protection, generally undermined their credibility. The RPD found that the Tacoa Veljovics' explanations for these trips and this delay were not credible, and that their actions were not consistent with a subjective fear of persecution.

[17] Second, the RPD found that Guillermo's testimony was inconsistent with his initial narrative. Among other things, Guillermo testified that he received threatening phone calls at the beginning of 2016, and that a few months later, in May, he was involved in a politically motivated car accident causing the death of the passenger in his vehicle. The RPD noted that Guillermo's explanations as to why these events were not in his narrative, namely, that it might have been lost in translation and that he was not certain that the car accident was politically motivated at first, were not credible.

[18] Third, the RPD found contradictions regarding the Tacoa Veljovics' narrative on the alleged kidnapping event that occurred in November 2016. Guillermo testified that it happened on November 11. However, all the other evidence indicated that it happened on November 10. Confronted with this contradictory evidence, Guillermo was unable to explain the discrepancy, but was emphatic that the event occurred on November 11, not November 10. Further, the RPD noted that the testimonies were inconsistent with the stamps in Armando's and his wife's passports, which indicated that they were out of the country from November 9 to November 16, 2016. Accordingly, whether the kidnapping happened on November 10 or on November 11, it was ultimately not credible in either scenario because Armando could not have been with Guillermo when the alleged events took place.

[19] Finally, the RPD found irregularities with multiple documents on the record. Among others, the RPD held that the wanted posters and Primero Justicia's membership letters submitted were not genuine because of the lack of credibility in the Tacoa Veljovics' testimonies about how these documents were obtained. With regard to the psychotherapist's report on Ana's mental health, the RPD determined that, since such report was based on the same dishonest

representations as the ones the Tacoa Veljovics made before the RPD, it would not give much weight to the report.

[20] Cumulatively, these findings led the RPD to arrive at a negative conclusion regarding the overall credibility of the Tacoa Veljovics. The RPD thus rejected the Tacoa Veljovics' refugee claim because they failed to establish, with credible and trustworthy evidence, that they would face a serious possibility of persecution or that, on a balance of probabilities, they would face a risk to their life or a risk of cruel and unusual treatment or punishment or a danger of torture if they were to return to Venezuela.

[21] The RPD further concluded that, given the material credibility concerns and the fabricated documents, the Tacoa Veljovics' claims for refugee protection were clearly fraudulent. Accordingly, the RPD found that the claims were manifestly unfounded pursuant to section 107.1 of the IRPA.

### **C. *The standard of review***

[22] The Tacoa Veljovics and the Minister of Citizenship and Immigration [Minister] both submit that the standard of reasonableness applies to the judicial review of the Decision with regard to the RPD's assessment of the evidence and its findings of credibility. I agree (*Tchiianika v Canada (Immigration, Refugees and Citizenship)*, 2022 FC 1119 at para 10).

[23] Reasonableness is the presumptive standard that reviewing courts must apply when conducting judicial review of the merits of an administrative decision (*Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Reasonableness focuses on the decision made by the administrative decision maker, which encompasses both the reasoning process and the

outcome (*Vavilov* at paras 83, 87). 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 to 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” (*Vavilov* at para 85). The reviewing court must therefore consider whether the “decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99).

[24] Such a review must include a rigorous evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must begin its inquiry by examining the reasons provided with “respectful attention,” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion (*Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (*Vavilov* at para 13).

[25] The onus is on the party challenging the administrative decision to prove that it is unreasonable. Flaws must be more than superficial for a reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (*Vavilov* at para 100). When the reasons contain a fundamental gap or an unreasonable chain of analysis, a reviewing court may have grounds to intervene.

[26] However, the standard of review applies differently on procedural fairness issues. It is true that many courts have stated that the standard of correctness applies to procedural fairness issues. But the Federal Court of Appeal has repeatedly held that procedural fairness does not

truly require the application of the usual standards of judicial review (*Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 [CPR] at para 54). Rather, it is a legal question that must be assessed on the basis of the circumstances and which requires the reviewing court to determine whether or not the procedure followed by the administrative decision maker respected the standards of fairness and natural justice (CPR at para 56; *Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at paras 51–54).

[27] Thus, when procedural fairness and alleged breaches of fundamental justice are the object of an application for judicial review, the reviewing court must take into account the particular context and circumstances at issue. Its role is to determine whether the process followed by the administrative decision maker was fair and offered the affected parties a right to be heard as well as a full and fair chance to know and respond to the case against them. The reviewing court owes no deference to the decision maker when considering issues of procedural fairness.

### **III. Analysis**

[28] The Tacoa Veljovics raise three main grounds to challenge the RPD Decision: 1) the RPD breached the Tacoa Veljovics' rights to procedural fairness; 2) the RPD erred in its assessment of the evidence; and 3) the RPD erred by declaring that the Tacoa Veljovics' refugee claim was manifestly unfounded. Each will be dealt with in turn.



**A. *There was no breach of procedural fairness***

[29] The Tacoa Veljovics claim that the RPD denied them their right to a fair procedure by refusing to question them on the genuineness of the police report and of the wanted posters they submitted, which were ultimately found to be fabricated and contributed to the RPD's findings on lack of credibility. By doing so, the RPD would have foreclosed the Tacoa Veljovics of their ability to defend themselves.

[30] I do not agree.

[31] While it is true that applicants must be given an opportunity to address the decision maker's concerns in order to benefit from a fair procedure, the decision maker is not obligated to put every deficiency to an applicant (*Jurado Barillas v Canada (Citizenship and Immigration)*, 2019 FC 825 [*Jurado Barillas*] at para 14). It is only when a deficiency is central to the RPD's determination that "the RPD's failure to put the matter to an applicant may be a violation of procedural fairness" (*Jurado Barillas* at para 14, citing *Ananda Kumara v Canada (Citizenship and Immigration)*, 2010 FC 1172 at paras 3–5).

[32] Here, the crux of the RPD's issue with the police report was the inconsistencies found in the timeline of the kidnapping events in November 2016. The RPD explained as follows:

[67] I note there are problems with the original documents, for example the stamps appear to be under the signatory's name and typed name not over, an indication that the stamp was on the page before the individual signed the page. The print in the statement appears to be over the stamp, and not under, as if the stamp existed on the blank page before the statement. However, given the claimant's testimony and his insistence he was kidnapped on November 11, 2016, I elected not to question him further as it relates to these documents. I find the police report is not genuine

and was created to support the male claimant allegations as to why he fled in November 2016.

[My emphasis.]

[33] The Tacoa Veljovics were well aware of the RPD's concerns with the discrepancy between their narratives and their testimonies with regard to the exact date of the November 2016 kidnapping. As discussed below, Guillermo addressed this in his testimony. The problems that the RPD identified with the police report itself only reinforced the RPD's finding that the November 2016 kidnapping was not credible. As the RPD clearly stated, the main issue with this event was the timeline, not the questions regarding the police report:

[71] ... Given [Armando] and [Ana] were not in the country on this date, the incident could not have occurred as written. Given the other credibility issues, I find this incident did not occur as the claimants allege.

[34] In the circumstances, I am not convinced that the Tacoa Veljovics did not receive a fair opportunity to address the main concerns of the RPD, or that the issues with the police report were central to the RPD's determination on this line of events. On the contrary, the Tacoa Veljovics were questioned by the RPD, the issue was brought to their attention, and they had an opportunity to be heard. The RPD clearly put its concerns with the documents to the Tacoa Veljovics during the hearing. Accordingly, the RPD's lack of additional questioning on this point is not a sufficiently serious shortcoming to warrant the Court's intervention (*Vavilov* at para 100). Moreover, the RPD's decision not to pursue its questioning simply reflects the fact that, at that point in its investigatory process, the RPD was satisfied that it had enough elements and did not need to inquire further. This does not amount to a breach of procedural fairness.

[35] Furthermore, the argument that the RPD failed to question the Tacoa Veljovics about the wanted posters apparently issued by the Venezuelan authorities has no merit. In the Decision, at paragraphs 72 to 76, the RPD recounts the Tacoa Veljovics' testimony on the questions asked by the RPD about the posters. So, it is incorrect to state that there was a failure to put the issue to the Tacoa Veljovics. Because of the credibility issues with the Tacoa Veljovics' testimonies, the RPD found that the lack of evidence on the origin of the documents — such as a letter from the cousin who sent them the wanted posters — prevented it from establishing their genuineness.

[36] In summary, the Tacoa Veljovics were well aware of the central deficiencies in their case, and of the RPD's main concerns with their testimonies. They had an opportunity to address them, but failed to do so to the satisfaction of the RPD. I do not detect any breach of procedural fairness in the process followed by the RPD.

**B. *The assessment of the evidence was reasonable***

[37] As a second argument, the Tacoa Veljovics complained that the RPD erred in its assessment of their credibility on several fronts.

**(1) *The principles governing credibility findings***

[38] First, a brief review of the principles applicable to credibility findings is helpful.

[39] While refugee applicants are presumed to tell the truth, their lack of credibility can suffice to rebut the presumption, especially where the RPD “is unsatisfied with the applicant’s explanation for those inconsistencies” (*Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*] at para 21, citing *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at

para 19). The RPD is usually best positioned to assess the applicant's credibility since it has the benefit of hearing their testimony (*Lawani* at para 22, citing *Jin v Canada (Citizenship and Immigration)*, 2012 FC 595 at para 10). Additionally, "the accumulation of contradictions, inconsistencies and omissions regarding crucial elements of a refugee claim can support a negative conclusion about an applicant's credibility" (*Lawani* at para 22, citing *Sary v Canada (Citizenship and Immigration)*, 2016 FC 178 at para 19 and *Quintero Cienfuegos v Canada (Citizenship and Immigration)*, 2009 FC 1262 at para 1).

[40] The paragraph 24 of *Lawani* is of particular importance in this case. It reads as follows:

[24] Fourth, a lack of credibility concerning central elements of a refugee protection claim can extend and trickle down to other elements of the claim (*Sheikh v Canada (Minister of Employment and Immigration)*, 1990 CanLII 13057 (FCA), [1990] FCJ No 604 (FCA) (QL) at paras 7-8), and be generalized to all of the documentary evidence presented to corroborate a version of the facts. Similarly, it is open to the RPD not to give evidentiary weight to assessments or reports based on underlying elements found not be credible (*Brahim v Canada (Citizenship and Immigration)*, 2015 FC 1215 [*Brahim*] at para 17).

[41] In light of these principles, I am satisfied that the RPD's various conclusions concerning the Tacoa Veljovics' credibility are reasonable. Their narratives indeed contain numerous inconsistencies, which could reasonably be found to fatally affect their credibility. The arguments presented by the Tacoa Veljovics merely express their disagreement with the RPD's evaluation and weighing of the evidence, and ask the Court to prefer their opinion and interpretation of the evidence to those of the RPD. However, this is not the role of a reviewing court in judicial review applications.

**(2) Failure to consider the psychotherapist report**

[42] The Tacoa Veljovics argue that the RPD erred by making negative credibility findings without first considering the psychological evidence regarding Ana's diagnosis of post-traumatic stress disorder and the recommendations to treat her condition.

[43] The Tacoa Veljovics rely on *Akter v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1205 and *Atay v Canada (Citizenship and Immigration)*, 2008 FC 201 to make the argument that psychological evidence must be considered before the decision maker can make negative credibility findings on an applicant. While I do not dispute this principle, I find that it is irrelevant in this case. The RPD did not rely on Ana's testimony to draw negative credibility findings in the Tacoa Veljovics' refugee claims. Rather, the inconsistencies and discrepancies identified by the RPD only stemmed from Armando's and Guillermo's narratives and testimonies. Therefore, it is only the deficiencies, omissions, and contradictions contained in their statements that affected the outcome of Ana's claim, who relied on her husband's narrative for her own refugee claim. The RPD did not make negative credibility findings because of the quality of her testimony, which is the only one, in the circumstances, that could have been affected by the effects of a diagnosed post-traumatic stress disorder.

[44] Furthermore, the psychotherapist's report mostly relays the events as they were described by Ana. As this Court held in *Saha v Canada (Citizenship and Immigration)*, 2009 FC 304 at paragraph 16, "[i]t is within the RPD's mandate to discount psychological evidence when the doctor merely regurgitates what the patient says are the reasons for his stress and then reaches a medical conclusion that the patient suffers stress because of those reasons. This is particularly the case where the RPD rejects the underlying facts of the diagnosis." It is well recognized in the

case law that the recounting of events to a health professional does not suddenly make the events more credible or confirm an allegation of abuse (*Konecoglu v Canada (Citizenship and Immigration)*, 2021 FC 1370 at para 18; *Boyce v Canada (Citizenship and Immigration)*, 2016 FC 922 at paras 52–62). After reviewing the content of the psychotherapist report, I find that this is precisely what happened in Ana’s case (Certified Tribunal Record [CTR] at pp 350–351, 506–508).

[45] Additionally, the Tacoa Veljovics claim that the RPD erred by stating that the psychotherapist did not recommend any accommodations, whereas she explicitly did so (CTR at p 508). According to the Tacoa Veljovics, this would demonstrate that the RPD did not pay attention to the evidence before it.

[46] I am not convinced by this argument. At paragraph 53 of the Decision, the RPD wrote that it has “considered the psychotherapist report provided for the female claimant and note there were no accommodations requested.” In my view, it is unclear whether, in that statement, the RPD referred to the lack of accommodations recommended by the psychotherapist, or to the fact that the Tacoa Veljovics themselves did not request accommodations for the hearing, despite the psychotherapist report.

[47] In any event, even if the RPD had committed an error on the absence of a request for accommodation, such error is not determinative of the case. The Tacoa Veljovics did not suggest to the Court that Ana was improperly accommodated during the hearing. Therefore, there is no procedural defect on this ground, and no negative impact on the outcome of the Decision. Furthermore, the RPD’s findings did not rely on the events as recounted by Ana in her testimony. As such, the RPD could reasonably conclude that, since she relied on her husband’s narrative in

her refugee claim, the defects identified with Armando's testimony necessarily affected her claim as well.

**(3) Omissions and inconsistencies in the Tacoa Veljovics' narrative**

[48] The Tacoa Veljovics contend that the threatening phone calls and the car accident that they omitted from their narratives — but discussed at the hearing — do not go to the core of the claim, and therefore that these are not omissions that could reasonably reinforce the RPD's negative credibility findings. The Tacoa Veljovics rely on *Akhighbe v Canada (Minister of Citizenship & Immigration)*, 2002 FCT 249 to make the argument that the RPD is not entitled to draw negative inference on the basis of an applicant omitting minor details from his or her narrative.

[49] Again, I am not persuaded by their argument. The omissions singled out by the Tacoa Veljovics refer to two events that would have contributed to establish the risk of harm they claimed. They are not merely minor or superficial details, nor are they simply an "elaboration" of the events that occurred. In their narratives, the Tacoa Veljovics described multiple alleged events of threats, giving details about the dates, the circumstances, and the assailants for each of them. In the face of their explanations as to other events that would justify their fear of persecution by the Venezuelan authorities, the RPD could reasonably conclude that the omissions with respect to the threatening phone calls and the car accident further contributed to the lack of credibility of the Tacoa Veljovics.

[50] In addition, I find that the Tacoa Veljovics are mistaken to state that the error with the date of the November 2016 kidnapping is minor, because it boils down to a one-day error. The

RPD was not so much concerned with the magnitude of the error, but rather with the answers given in the testimonies to that effect. The RPD noted that many pieces of evidence submitted by the Tacoa Veljovics, including the police report, stated that the kidnapping happened on November 10, 2016, despite the Tacoa Veljovics being emphatic that the kidnapping happened on November 11, 2016. The Tacoa Veljovics simply stated that they could not explain why the documentary evidence indicated November 10 instead of November 11. Most importantly, the RPD determined that whether the kidnapping happened on November 10 or November 11 was irrelevant, as Guillermo testified that Armando was with him at that event, whereas further evidence places Armando in Curacao at that time. It should be recalled that “[s]ituations where implausibility findings can be made include where... the documentary evidence demonstrates that the events could not have taken place as alleged” (*Lawani* at para 26). Accordingly, I am satisfied that the RPD could reasonably draw a negative inference from the inconsistencies and omissions in the Tacoa Veljovics’ testimonies and narratives as to the alleged November 2016 kidnapping.

[51] Here again, the Tacoa Veljovics simply disagree with the RPD’s assessment on this point, which is not sufficient to allow the Court to intervene (*Olusola v Canada (Immigration, Refugees and Citizenship)*, 2019 FC 46 at para 11; *Guzun v Canada (Citizenship and Immigration)*, 2011 FC 1324 at para 18).

#### **(4) The RPD’s assessment of membership letters and family letters**

[52] The Tacoa Veljovics also expressed their concerns with the RPD’s assessment of the Primero Justicia membership letters and the family letters they submitted.



[53] According to the Minister, the RPD's findings on the vagueness of the Tacoa Veljovics' testimony, coupled with the lack of other corroborating evidence on their membership in Primero Justicia and of corroboration on how they joined the political group, is sufficient to explain why the RPD assigned little weight to the letters.

[54] I have to admit that the RPD's reasons for rejecting the membership letters are far from clear. Further, the RPD clearly made an error in assessing the family letters submitted by the Tacoa Veljovics for what this evidence does not contain, which is contrary to the jurisprudence from this Court (*Belek v Canada (Citizenship and Immigration)*, 2016 FC 205 at paras 21–22). Indeed, the RPD stated, among other things, that “[n]one mention the claimants having been members of Primero Justicia, none indicate or identify if they are members” (Decision at para 80).

[55] However, the RPD stated the following at paragraph 77 of the Decision: “Given there are no security features, and the issues with his testimony, I grant this document little weight to support the male claimant allegations of being a member of Justicia Primero [*sic*].” This statement indicates that the RPD was clearly concerned with the evidence adduced by the Tacoa Veljovics generally, because of the implausibilities in their testimonies. It should be recalled that lack of credibility concerning central elements of a claim can extend to other documents of the claim (*Lawani* at para 24). Such principle was also relied on by the RPD when it stated at paragraph 84 of the Decision that “[o]verall, when considering the credibility concerns arising from the claimants' evidence with respect to material aspects of these claims, I find that, on a balance of probabilities, the claimants' evidence is not credible or trustworthy.”

[56] Accordingly, the inconsistencies with respect to the November 2016 kidnapping events, coupled with the omissions in the Tacoa Veljovics' narratives and their vague testimony on their membership in Primero Justicia, are sufficient to sustain the negative findings on credibility. Such findings can also reasonably affect the RPD's assessment of other evidence brought forward by the Tacoa Veljovics (*Zhou v Canada (Citizenship and Immigration)*, 2021 FC 685 [*Zhou*] at para 27).

[57] Ultimately, the RPD's errors in the treatment of the letters is not a "sufficiently serious shortcoming" to warrant overturning the Decision, because "there were many other, independent reasons for the [RPD's] finding that the [Tacoa Veljovics] lacked credibility in relation to the core element of [their] claim... Overall, it was not unreasonable for the [RPD] to find that the documentary evidence did not overcome the deficiencies in the... evidence" (*Zhou* at para 29).

**(5) Analysis of the Tacoa Veljovics' subjective fear**

[58] The Tacoa Veljovics then maintain that the RPD erred in its assessment of their subjective fear. They submit that the 2019 events, namely, the last kidnapping where Ana was allegedly raped in front of her husband, forced them to leave Venezuela. The Tacoa Veljovics rely on *Ali v Canada (Citizenship and Immigration)*, 2019 FC 859 [*Ali*] to make the argument that the RPD should have considered that those 2019 events were a precipitating factor in their choice to leave Venezuela. Further, since subsequent persecution after re-availment does not preclude a person from making a claim for refugee status, the Tacoa Veljovics argue that the RPD erred in considering their numerous trips out of Venezuela (*Gurusamy v Canada (Citizenship and Immigration)*, 2011 FC 990 [*Gurusamy*] at para 40).

[59] Again, I am not convinced by the Tacoa Veljovics' arguments. The present case differs from that of *Ali*, where the RPD did not make an explicit finding of credibility. Accordingly, the RPD had no reason not to consider the increased fear of persecution over time. Here, because of the credibility issues, the RPD was not bound by the Tacoa Veljovics' testimony on their increased fear after the 2019 events, since the RPD held that they lacked credibility on their whole testimony and narratives. The same goes for the case of *Gurusamy*, where the Court was not satisfied that the RPD's credibility assessment was reasonable. Therefore, the Court concluded that the RPD's failure to consider subsequent persecution after re-availment was unreasonable.

[60] Ultimately, the behaviour of a refugee claimant may undermine their credibility with respect to subjective fear, such as when they fail to claim refugee protection in a Convention country at the first opportunity, or when they return to the country of persecution (*St-Sulne v Canada (Citizenship and Immigration)*, 2020 FC 620 at para 19; *Manirakiza v Canada (Citizenship and Immigration)*, 2009 FC 1309 at paras 17–18). In the present case, in light of the negative credibility findings, I find that it was reasonable for the RPD not to rely on the Tacoa Veljovics' explanations for their travels outside Venezuela and their decision to leave after the 2019 events.

**(6) Failure to consider the objective evidence**

[61] Finally, the Tacoa Veljovics claim that the RPD erred by omitting to look at the objective evidence on violence against individuals expressing political dissent in Venezuela. However, the RPD had clearly rejected the allegation that the Tacoa Veljovics were members of *Primero Justicia* (Decision at para 82). In light of this finding, it was irrelevant for the RPD to consider

objective evidence of politically motivated violence in Venezuela, because it could not have linked that evidence to the particular circumstances of the Tacoa Veljovics (*Woldemichael v Canada (Citizenship and Immigration)*, 2020 FC 655 at para 30). Thus, the Tacoa Veljovics' argument on this front has no merit.

**(7) Conclusion on the assessment of the evidence**

[62] For all of these reasons, I am of the opinion that the Decision bears the hallmarks of reasonableness, namely, justification, transparency, and intelligibility (*Vavilov* at para 99). The totality of the above findings do not lead me to “lose confidence in the outcome reached” by the RPD (*Vavilov* at para 106). The numerous inconsistencies and omissions with regards to the threats the Tacoa Veljovics face in Venezuela, coupled with their behaviour after the alleged events of violence are sufficient, cumulatively, to undermine their credibility (*Regala v Canada (Citizenship and Immigration)*, 2020 FC 192 at para 18). The RPD found that this lack of credibility also affected the documents submitted by the Tacoa Veljovics. Accordingly, the RPD could conclude that there was insufficient credible evidence on the record to sustain a finding that the Tacoa Veljovics would face a serious possibility of persecution, of a risk to their life, or of cruel and unusual treatment upon their return to Venezuela.

[63] I underscore that the Court owes high deference to the RPD's credibility findings, since the RPD has the benefit of hearing the applicants' testimonies (*Lawani* at para 22). There are no grounds for the Court to intervene in the RPD's assessment of the evidence.

**C. *The refugee claim was manifestly unfounded***

[64] As a third argument against the Decision, the Tacoa Veljovics submit that the RPD’s adverse credibility findings were not sufficient to render their claim “manifestly unfounded.”

[65] Again, I disagree with the Tacoa Veljovics.

[66] I accept that the threshold for a claim to be manifestly unfounded pursuant to section 107.1 of the IRPA is high (*Ahmad v Canada (Citizenship and Immigration)*, 2019 FC 11 [Ahmad] at para 30). To arrive at such finding, there must be evidence that the claim is “clearly fraudulent,” such as in cases where there are numerous discrepancies and difficulties with the evidence (*Ahmad* at para 32, citing *Warsame v Canada (Citizenship and Immigration)*, 2016 FC 596 [Warsame] at para 24; see also *Fatoye v Canada (Citizenship and Immigration)*, 2020 FC 456 at paras 43–52). The essential element of fraud in this context is dishonesty on material aspects of the refugee claim (*Ahmad* at para 34; *Warsame* at paras 28–30).

[67] Here, the RPD found that the Tacoa Veljovics relied on dishonest representations and fabricated documents going to the core of their claims, namely, on the key events that would have established that the Tacoa Veljovics are being persecuted because of their political affiliations. The RPD’s conclusions are consistent with the meaning of a fraudulent conduct, as described by this Court in *Ahmad* and *Warsame*. Since the RPD’s credibility findings and document authenticity findings are reasonable, I find that its conclusion on the Tacoa Veljovics’ refugee claims being manifestly unfounded is also reasonable (*Ahmad* at para 35).

[68] The reasoning and analysis of the RPD fully embraced the jurisprudential requirements for characterizing a claim as manifestly unfounded under section 107.1 of the IRPA. In

*Warsame*, Justice Roy explained that the RPD must first be of the opinion that the refugee protection claim is clearly fraudulent (*Warsame* at para 23). After concluding this, the RPD “must then state that the refugee claim is manifestly unfounded and give its reasons for it” (*Warsame* at para 23). To this end, the RPD must have evidence showing that the claim is clearly fraudulent (*Warsame* at para 24). In addition, the deceit or falsehood must have a material effect concerning the determination of the claim (*Warsame* at para 30). In other words, for a refugee protection claim to be considered clearly fraudulent, the decision maker must have “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” (*Warsame* at para 31). In *Warsame*, the Court determined that it was reasonable for the RPD to find that the refugee protection claim was manifestly unfounded since it was based on false statements touching on matters at the heart of the claim, including the identity of the claimant (*Warsame* at para 26).

[69] This is exactly the same type of analysis that the RPD conducted in the case of the Tacoa Veljovics. The RPD Decision contains sufficient details and justifications to demonstrate how their refugee claims were fraudulent. There is no doubt, on a full reading of the reasons, that the Tacoa Veljovics’ claims were not found to be manifestly unfounded solely on the basis of the negative credibility findings made by the RPD.

#### **IV. Conclusion**

[70] For the above-mentioned reasons, the Tacoa Veljovics’ application for judicial review is dismissed. The Decision constitutes a reasonable outcome based on the law and the evidence,

and it has the requisite attributes of transparency, justification, and intelligibility. According to the reasonableness standard, it is sufficient for the Decision to be based on an internally coherent and rational analysis, and to be justified having regard to the legal and factual constraints to which the decision maker is subject. This is the case here with respect to the RPD's conclusions, and there are no grounds justifying the Court's intervention.

[71] There parties proposed no questions of general importance for certification, and I agree there are none.

**JUDGMENT in IMM-9563-21**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed, without costs.
2. There is no question of general importance to be certified.

“Denis Gascon”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9563-21

**STYLE OF CAUSE:** TACOA VELJOVIC ET AL v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HEARD BY VIDEOCONFERENCE

**DATE OF HEARING:** JULY 27, 2023

**JUDGMENT AND REASONS:** GASCON J.

**DATED:** AUGUST 3, 2023

**APPEARANCES:**

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