

Federal Court



Cour fédérale

Date: 20240118

Docket: IMM-9061-22

Citation: 2024 FC 86

Ottawa, Ontario, January 18, 2024

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

MARIELA PEREZ CASTANEDA

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 the Refugee Appeal Division [RAD] dated August 22, 2022 [Decision]. In the Decision, the RAD dismissed the Applicant's appeal from a decision of the Refugee Protection Division [RPD] and upheld the RPD's decision that the Applicant is neither a Convention refugee nor a person in need of protection under section 96 or 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

[2] As explained in greater detail below, this application is dismissed, because the Applicant's arguments do not undermine the reasonableness of the Decision.

II. Background

[3] The Applicant is a citizen of Mexico, who fled an abusive relationship, arrived in Canada in November 2019, and subsequently claimed refugee protection. She came to believe that her ex-partner is connected to the Cartel Jalisco Nueva Generacion [CJNG], because her mother has seen him mingling with that criminal element. The Applicant therefore fears that, if she lives anywhere in Mexico, her ex-partner will be able to find her because of his connections to the CJNG.

[4] The RPD believed the Applicant's allegations about having a romantic partner who became abusive. However, it concluded that she has a viable internal flight alternative [IFA] in either Campeche or Merida, Mexico. The RPD found that it was only speculative that her ex-partner has connections with the CJNG, that the cartel does not have influence in the IFAs, and that it was not unreasonable in all the circumstances for her to relocate to either of those cities.

[5] The Applicant appealed the RPD's decision to the RAD. In the Decision under review in this application, the RAD dismissed the Applicant's appeal.

III. Decision under Review

[6] In considering the first branch of the IFA test, which required the Applicant to show on a balance of probabilities that there was not a serious possibility or reasonable chance she would be subject to persecution in the IFA, the RAD disagreed with an aspect of the RPD's analysis. The RPD had drawn a negative inference from the Applicant's decision not to tell her father about her abusive ex-partner. The RAD found that the RPD's logic disregarded the Applicant's explanation that she did not have a close relationship with her father and failed to appreciate the Gender Guidelines' explanation as to the difficulty of sharing domestic abuse, even with family members.

[7] However, the RAD concluded that this error in the RPD's IFA analysis did not change its outcome, as it did not alter the finding that the ex-partner's means and motivation to locate the Applicant was speculative. The RAD reasoned that, while the Applicant's subjective fear was real, it did not have an objective basis to demonstrate a reasonable chance or serious possibility of future harm in the proposed IFA. The RAD found that the RPD was correct to identify that the Applicant offered no evidence to indicate her ex-partner had approached friends or family for her whereabouts since 2019. The RAD also rejected the Applicant's argument that the seriousness of the past violence represented a basis to anticipate future harm, reasoning that the RPD was correct to focus on the lack of evidence of continued pursuit and means to find the Applicant.

[8] The RAD also concluded that the suggestion of the Applicant's ex-partner having a connection to the CJNG was based on rumour and was therefore speculative and that, in any

event, the country condition evidence [CCE] indicated it was more likely than not that the CJNG does not have influence in Campeche and Merida.

[9] Turning to the second branch of the IFA test, which considers the reasonableness of the IFA, the RAD rejected the Applicant's argument that the RPD did not give sufficient consideration to the Applicant's mental state. The Applicant's counsel relied on a psychotherapist's report and emphasized the challenges that the Applicant, as a survivor of gender-based violence, would face in either proposed IFA location. However, the RAD found that the RPD had considered these challenges and concluded that the high threshold that the law imposed to demonstrate unreasonableness was not met. The RPD adopted the RPD's reasoning, observing that there were limits to what the psychological report could offer for purposes of the IFA assessment.

[10] The RAD therefore concluded that the Applicant had a viable IFA and confirmed the RPD's decision that the Applicant was neither Convention refugee nor a person in need of protection.

IV. Issues and Standard of Review

[11] The sole issue identified by the Applicant for the Court's consideration is whether the RAD erred in its IFA analysis. This issue is reviewable on the reasonableness standard.

V. Analysis

[12] Under the first prong of the IFA test, which considers the risk to a claimant in a proposed IFA, the Applicant submits that the RAD erred in reasoning that she would be safe in either Campeche or Merida because her ex-partner had not looked for her since 2019. She argues that, as she has been out of the country since 2019, it was unreasonable to expect her to know whether her ex-partner had attempted to contact her.

[13] The RAD agreed with and adopted the RPD's analysis that considered the fact that the Applicant's ex-partner had approached her family's home multiple times from February to June 2019 but had not returned there since. Moreover, the Applicant had confirmed in her testimony that her former partner had not otherwise directly threatened her family members or herself, including through her family members or local friends and acquaintances. The RPD acknowledged the Applicant's evidence that she had kept a low profile and avoided contact outside her family since coming to Canada. However, it also noted that some communication outside her family had occurred, without any mention of ongoing threats or efforts by the Applicant's ex-partner to locate her. The RAD adopted this analysis, it is intelligible, and I find no reviewable error therein.

[14] The Applicant also argues that the RAD erred by expecting her to provide evidence that her ex-partner was affiliated with the CJNG. She relies on authorities explaining when it is appropriate to expect corroboration of aspects of a refugee claim, for instance where there is a valid reason to doubt the claimant's credibility (*Ndjavera v. Canada (Citizenship and*

Immigration), 2013 FC 452 at para 7; *Senadheerage v Canada (Citizenship and Immigration)*, 2020 FC 968). However, the RAD's conclusion that the alleged cartel affiliation was speculative was not based on a lack of corroboration for the Applicant's evidence. Rather, the RPD, and the RAD in adopting its analysis, found the Applicant credible, but she acknowledged that her ex-partner's alleged affiliation was based only on local rumours. It was not unreasonable for the RAD to find this evidence insufficient to establish the allegation.

[15] The Applicant also relies on behaviour exhibited by her ex-partner, which she submits is supportive of her inference that he is involved in criminal activity. She submits that the RAD overlooked or ignored this evidence.

[16] An administrative decision-maker is not required to refer to every piece of evidence that is before it, although the more important the evidence that is not specifically mentioned and analysed in the decision-maker's reasons, the more willing a court may be to conclude based on such silence that the decision-maker made an erroneous finding of fact without regard to the evidence (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC), [1998] FCJ No 1425 [*Cepeda-Gutierrez*] at paragraph 16 to 17).

[17] I accept that the Applicant has made an inference, based on her ex-partner's past actions including threats and methods of assault, that he is involved with organized crime in Mexico. However, such an inference is not so compelling that application of the principles described in *Cepeda-Gutierrez* supports a conclusion that the RAD overlooked this evidence or that it was unreasonable for the RAD not to draw the same inference as the Applicant.

[18] The Applicant also challenges the RAD's finding that it is more likely than not that the CJNG does not have influence in Campeche or Merida. She notes the existence of CCE that refers to this cartel having a presence in those locations. However, the RPD's analysis, which the RAD adopts, recognizes the mixed nature of the CCE on the subject. Again applying the *Cepeda-Gutierrez* principles, there is no basis to conclude that the RAD overlooked the evidence upon which the Applicant relies.

[19] Finally, in relation to the first prong of the IFA test, the Applicant submits that the RAD erred in concluding that the possibility, that the sort of persecution she has experienced in the past will happen in the IFAs, does not become more likely by emphasizing the seriousness of the past abuse. She relies on *Natynczyk v Canada (Minister of Citizenship and Immigration)*, 2004 FC 914 at paragraph 71, which held that, although the test for a well-founded fear of persecution is forward-looking, past incidents represent one of the most effective means of showing that a fear of future persecution is objectively well-founded.

[20] The Applicant also refers the Court to *AHA v Canada (Citizenship and Immigration)*, 2020 FC 787 [AHA] at paragraph 13, which relied on a history of domestic violence in finding it unreasonable for the RAD to have concluded that the agents of persecution lacked the motivation to locate the claimants in the IFA.

[21] I find no error in this aspect of the Decision. In *AHA*, the Court found that the RAD's analysis had omitted the family dynamics of domestic violence. In contrast, in the case at hand, the RAD explained that it was not in doubt that the abusive relationship occurred and caused the

Applicant to flee. However, the Applicant's counsel had argued before the RAD that the RPD was overly focused on the ex-partner's means and motivation. The RAD therefore explained that, in the context of an IFA analysis, the law required consideration of the means and motivation of the agent of persecution to locate the claimant.

[22] Turning to the second prong of the IFA test, the Applicant submits that the RAD erred in finding that her psychological report had been properly assessed. In considering her counsel's submissions as to fears identified in the report, the RAD noted that the safety element of the Applicant's claim had already been assessed as speculative, and the RAD commented that it was not less so because of the psychological report. The RAD also noted that the report did not refer to specific incidents included in the Applicant's Basis of Claim form, such as her ex-partner's sexual assault of the Applicant. In relation to that comment, the Applicant notes that, although the psychological report did not mention the assault, she also tendered a medical report that referred to this incident. She submits that the RAD failed to take the medical report into account.

[23] I find no error in this aspect of the RAD's analysis. As I read this portion of the Decision, the RAD was merely explaining that the psychological report did not alter the outcome under the first prong of the IFA test. Although commenting that the report did not set out specific incidents of abuse, the RAD noted that this was not to say that the Applicant had not suffered such abuse.

[24] In relation to the second prong itself, which considers whether it would be reasonable to expect the claimant to move to the proposed IFA, the RAD noted the Applicant's argument based on the psychological report that the RPD did not appreciate the damaging mental health

consequences that the Applicant would suffer from returning to Mexico. The RAD further noted the Applicant's argument that she would have limited family resources and that, as a single mother unfamiliar with the IFA location, she would face significant economic and cultural challenges. However, the RAD found that these arguments did not expose errors in the RPD's analysis.

[25] Rather, the RAD adopted the RPD's analysis, which considered the challenges for the Applicant as a single parent and a person who had suffered domestic abuse, including examination of her employment history and skills, and access to personal and family supports. The RPD's decision demonstrates that it recognized the opinion of the author of the psychological report, that the Applicant would benefit from staying in Canada where she would feel safe and secure. Similarly, the RAD noted the report's suggestion that the Applicant attributed the achievement of her therapeutic goals to her feeling of safety and security in Canada. However, the RAD agreed with the RPD's explanation of the law, that the very high threshold for an IFA to be unreasonable required nothing less than the existence of conditions which would jeopardize the life and safety of the claimant, and agreed with the RPD's conclusion that the hardships raised by the Applicant did not meet the threshold.

[26] As such, it is clear that the RAD did not overlook the psychologist report. To the extent the Applicant argues that the report was not properly considered, I agree with the Respondent's submission that the Applicant is asking the Court to re-weigh the evidence in her favour, which is not the Court's role on judicial review.

[27] Having found that the Applicant's arguments do not undermine the reasonableness of the Decision, this application for judicial review must be dismissed. Neither party proposed any question for certification for appeal, and none is stated.

JUDGMENT IN IMM-9061-22

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

No question is certified for appeal.

"Richard F. Southcott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9061-22

STYLE OF CAUSE: MARIELA PEREZ CASTANEDA v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 17, 2024

JUDGMENT AND REASONS: SOUTHCOTT J.

DATED: JANUARY 18, 2024

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