

Federal Court



Cour fédérale

Date: 20240627

Docket: IMM-3839-23

Citation: 2024 FC 1001

Ottawa, Ontario, June 27, 2024

PRESENT: Madam Justice McDonald

BETWEEN:

VICTORIA RODRIGUEZ OLIVEIRA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Refugee Protection Division [RPD] made a “no credible basis” finding on a refugee claim for a child based upon her father’s evidence. The child Applicant and her parents are citizens of Brazil. The Applicant was found eligible to make a refugee claim; while her parents were ineligible as they had made an asylum claim in the United States of America. In her

refugee claim, her father acted as her designated representative [DR]. The core of the refugee claim is the risk from criminal drug gangs in Brazil who are affiliated with the Applicant's uncle.

[2] This judicial review is granted solely on the grounds that I am not satisfied the RPD considered all the evidence when it made a “no credible basis finding” pursuant to subsection 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27.

I. Issues and standard of review

[3] The only issue is if the RPD erred by failing to assess all the evidence when it made a “no credible basis” finding.

[4] The parties agree that the standard of review is reasonableness as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov]. The Court will assess if the decision bears the hallmarks of reasonableness—justification, transparency, and intelligibility—and if the decision is justified in relation to the relevant factual and legal constraints that bear on it (para 99).

II. Analysis

A. *Is the “no credible basis” finding reasonable?*

[5] The test for a finding of “no credible basis” is high and an examination of all evidence is required. A “no credible basis” finding should only be made where there is “no trustworthy or

credible evidence” that could support the claim (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 51 [*Rahaman*]).

[6] In the RPD decision, the consideration of the documentary evidence to support the “no credible basis” conclusion is confined to a few short paragraphs as follows:

[100] In the case at bar, the DR provided a few documents which I will assess and weigh accordingly.

[101] I have already addressed the concerns with the “pictures of the house” and accepted the evidence of the DR that he entered into training to become a police officer.

[102] I also accepted that the DR had rented a property in Cariacica and owned a restaurant in that city.

[103] None of the remaining documents in Exhibit 7 are relevant to the core allegations in the claim and therefore I assign them no weight because they do not further my understanding of the issues in the claim. [Footnotes omitted.]

[7] The remaining documents in Exhibit 7 that the RPD found were not relevant to the “core” of the claim are as follows:

- Certificate of Registration – Firearm;
 - Authorization to acquire firearm;
 - Receipt of Police Denunciation and Answer dated February 17 and 19, 2021;
 - Police Denunciation, Incident Report of Firearm Theft dated January 16, 2022;
- and
- Harassment Prevention Order.

[8] The core allegations in the DR claim is that his brother-in-law attracted criminals to his motorcycle repair shop which was located in the same building where the DR and his family lived. This criminal affiliation resulted in threats to the family. The police denunciations and the application for a firearm were offered as evidence of steps taken by the DR in response to those threats. The RPD does not undertake a separate analysis or consideration of this evidence in the context of the “no credible basis” finding. The RPD makes no explicit findings on the police denunciations made on February 17, 2021, and January 18, 2022. The RPD does not state if this evidence is reliable or trustworthy, but rather, dismisses these documents simply on the grounds that they are not “core” to the claim.

[9] Again, in the “no credible basis” finding, the RPD does not assess the documentary evidence that the DR applied for gun licenses on two occasions. The DR testified that he purchased guns for protection from criminals, which goes directly to the core of the claim. The RPD does not assess if this is trustworthy or credible evidence.

[10] It is not reasonable for the RPD to fail to assess this evidence by simply stating the evidence does not go to the “core” of the claim for protection. A finding of “no credible basis” requires that the RPD be rigorous in the consideration of all the evidence.

[11] I agree with the Applicant that the RPD appears to have concluded that because the DR was not found to be credible, all other evidence was similarly tainted (*Sterling v Canada (Citizenship and Immigration)*, 2016 FC 329 at para 12). However, the threshold for a “no

credible basis” finding is high and the RPD was required to consider all the evidence before making a finding that there was “no trustworthy or credible evidence” (*Rahaman* at para 51).

III. Conclusion

[12] The judicial review is granted as the RPD failed to assess all the evidence in relation to the “no credible basis” finding.

JUDGMENT IN IMM-3839-23

THIS COURT'S JUDGMENT is that:

1. This judicial review is granted, and the matter is remitted to the RPD for reconsideration on the "no credible basis" finding.
2. There is no question for certification.

"Ann Marie McDonald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

: IMM-3839-23

STYLE OF CAUSE: OLIVEIRA V THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 4, 2024

JUDGMENT AND REASONS: MCDONALD J.

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