

Federal Court



Cour fédérale

Date: 20130208

Docket: IMM-5378-12

Citation: 2013 FC 140

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, February 8, 2013

PRESENT: The Honourable Mr. Justice Simon Noël

BETWEEN:

**ERIKA ALEJANDRA VAZQUEZ BIZARRO
JESSICA PAULINA SANCHEZ VAZQUEZ
JOSE ESAU SANCHEZ VAZQUEZ
JOSUE HABACUC SANCHEZ VAZQUEZ**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision by the Refugee Protection Division (RPD) of the Immigration and Refugee Board dated May 9, 2012, pursuant to subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA). The RPD found that the

applicants are not Convention refugees under section 96 of the IRPA or persons in need of protection under section 97 of the IRPA.

I. Facts

[2] Erika Alejandra Vasquez Bizarro and her three children are citizens of Mexico. The principal applicant was apparently targeted by individuals who tried to get her to pay the money that her deceased husband owed them. She was allegedly also the victim of a dishonest lawyer, Vicente Garcia Gomez. She was apparently threatened and robbed. All of the incidents apparently took place between January 16, 2002, and August 26, 2008, the date on which the applicants arrived in Canada.

II. Decision under review

[3] The RPD found that the principal applicant is not credible because of numerous contradictions in her testimony and significant omissions that touch on elements at the heart of her claim. It therefore rejected the principal applicant's claim and her children's claims, which were based on hers.

[4] First, the principal applicant, during her testimony before the RPD, was unable to provide a date for most of the alleged incidents and claimed that she did not remember when specifically they had occurred.

[5] Second, during her testimony at the hearing, she explained why she fears the lawyer named Vicente Garcia Gomez. She talked about a particular incident that was not mentioned in her written

account. According to her testimony, the lawyer went to her children's school and tried to take them with him. The applicant stated that she had mentioned that in her testimony because she had just remembered the incident. The explanation was deemed unsatisfactory by the RPD.

[6] Third, the applicant also mentioned during her testimony that the lawyer named Vicente Garcia Gomez approached her and intimidated her when she was in Guadalajara. That incident was not included in her written account. The RPD rejected the applicant's explanation that she thought that the incident had been mentioned.

[7] Finally, regarding the robbery that apparently took place in January 2008, which, according to the principal applicant, is connected to the threats that were uttered against her, she states that she did not provide any name to the police officers who noted the damage.

III. Position of the applicants

[8] The applicants allege that the RPD's decision regarding the principal applicant's credibility is unreasonable given that the problems indicated by the panel do not concern facts at the heart of her claim.

[9] The principal applicant is of the opinion that the lawyer named Vicente Garcia Gomez's attempt to take her children at school should not have been considered an important element of her refugee claim.

[10] Second, the principal applicant alleges that the negative finding with respect to her credibility owing to the fact that she did not mention in her account that the lawyer intimidated her when she was in Guadalajara is unreasonable because it was an omission concerning an incidental element of her claim.

[11] No argument was submitted regarding the principal applicant's vagueness with respect to the dates of the incidents.

IV. Position of the respondent

[12] The respondent suggests that the RPD's findings regarding the applicant are reasonable because it is well established that it may find that the principal applicant is not credible because of significant omissions in her written account and significant vagueness in her testimony. Furthermore, it is up to the RPD to determine whether the explanations provided by the principal applicant regarding the significant omissions in her account are reasonable.

V. Issue

[13] Did the RPD err by finding that the principal applicant is not credible?

VI. Standard of review

[14] The reasonableness standard applies to the RPD's decision with respect to the credibility of the principal applicant because it is a question of fact (*Aguebor v Canada (Minister of Employment and Immigration)*, 160 NR 315 at paragraph 4, 1993 CarswellNat 303 (FCA)).

VII. Analysis

[15] The negative inferences drawn by the RPD regarding the principal applicant's credibility are reasonable for the following reasons.

[16] Under the circumstances, it was reasonable for the RPD to find that the principal applicant's failure to mention the lawyer Vicente Garcia Gomez's attempt to kidnap her children in her written account negatively affected her credibility. In fact, such an important fact for a mother of three children who cares about her children's safety should certainly have been mentioned in her written account.

[17] Furthermore, given that the applicant testified that she fears the lawyer named Vicente Garcia Gomez, it was reasonable for the RPD to find that the fact that she did not mention in her written account an episode during which he apparently threatened her negatively affected her credibility.

[18] This Court has repeatedly recognized that the RPD can reasonably base its negative findings with respect to credibility on the omissions and contradictions that it identifies with respect to important facts alleged in the Personal Information Form and the oral testimony (see *Basseghi v Canada (Minister of Citizenship and Immigration)*, [1994] FCJ 1867 at paragraph 33, 52 ACWS (3d) 165; *Feradov v Canada (Minister of Citizenship and Immigration)*, 2007 FC 101 at paragraph 18, 154 ACWS (3d) 1183). Furthermore, it is open to the RPD to reject an explanation provided with respect to such omissions when they are unreasonable (*Sinan v Canada (Minister of Citizenship and Immigration)*, 2004 FC 87 at paragraph 10). Thus, the RPD's findings regarding the

omissions in the applicant's written account as well as its rejection of the applicant's explanations with respect to those omissions are well-founded.

[19] Finally, regarding the vagueness of the dates on which the incidents purportedly occurred, this Court will not interfere with the RPD's findings because they are reasonable. In fact, a person who claims to fear persecution should be able to provide at least some dates for the important facts. Also, a reading of the RPD hearing transcripts shows a lot of vagueness in the principal applicant's testimony.

[20] Although the principal applicant's account and testimony show that other incidents occurred, it was reasonable in the circumstances to find that the omissions and vagueness with respect to the incidents were determinative and justified the rejection of the refugee claim.

[21] The parties were invited to submit a question for certification, but none was submitted.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that this application for judicial review is dismissed and no question will be certified.

“Simon Noël”

Judge

Certified true translation
Janine Anderson, Translator

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5378-12

STYLE OF CAUSE: ERIKA ALEJANDRA VAZQUEZ BIZARRO et al v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: January 24, 2013

**REASONS FOR JUDGMENT
AND JUDGMENT:** SIMON NOËL J.

DATED: February 8, 2013

APPEARANCES:

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