

Federal Court



Cour fédérale

Date: 20150116

Docket: IMM-3910-14

Citation: 2015 FC 70

Vancouver, British Columbia, January 16, 2015

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ALONDRA ANAHI DELGADO LOPEZ

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Court finds that the RPD's credibility findings, towards which the Court owes considerable deference, can rationally be supported (*Dunsmuir*, above at para 41). The RPD was entitled to find that the Applicant's inability to provide reasonable explanations for the significant omissions and contradictions in her claim undermines her credibility. The RPD's credibility findings are reasonable and do not form a basis upon which this Court may intervene.

II. Introduction

[2] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a Refugee Protection Board's [RPD] decision dated April 22, 2014, wherein the Applicant is found to be neither a Convention refugee nor a person in need of protection, under sections 96 and 97 of the IRPA.

III. Background

[3] The Applicant is a nineteen-year old citizen of Mexico, who claims a well-founded fear of persecution based on an imputed political opinion as well as a personalized risk upon return to Mexico.

[4] The Applicant alleges the following facts. On December 25, 2013, as the Applicant and her husband were traveling by car through a checkpoint in Mexico, five police officers forcibly beat and abducted the Applicant's husband. Although the police officers approached the Applicant's side of the vehicle, she managed to escape and run to the nearest supermarket, while avoiding gun shots fired at her by the officers.

[5] The Applicant fled Mexico on December 26, 2013, arrived in Canada on January 7, 2014 and subsequently claimed refugee protection in February 2014. A hearing was held by videoconference on April 14, 2014.

[6] On March 17, 2014, the Applicant gave birth to a Canadian-born girl.

IV. Impugned Decision

[7] The RPD identified credibility as the determinative issue in dismissing the Applicant's claim. The RPD made the following findings.

- i) The Applicant stated in her immigration forms that she had never been refused admission to any country. It was only following the Minister's intervention and upon probing that the Applicant testified that she traveled to the USA on September 15, 2013. The RPD found that the Applicant's failure to disclose this previous entry and the lack of explanation for this omission reflects the Applicant's willingness to misrepresent or withhold facts from Canadian immigration authorities, thus undermining her credibility;
- ii) The Applicant testified that when she entered the USA in September 2013, she did not have a bag, a passport or any money with her; although she had previously testified that her reason for travel to the USA was to buy clothes. The RPD found that this contradiction undermined the Applicant's alleged subjective fear, as she had previously left Mexico for unrelated reasons, in September 2013;
- iii) The Applicant provided conflicting dates relating to the issuance of her passport. The Applicant testified that she had applied for her passport in September 2013, although her passport was issued on August 29, 2013. When asked to explain this inconsistency, the Applicant testified that she did not know when her passport was issued. The RPD found that it was reasonable to expect that the claimant ought to know approximately when she applied for her passport, given that she made the application herself;

- iv) The Applicant's narrative of the events central to her claim of December 25, 2013, is vague, thus undermining her credibility. The RPD made a negative inference of the Applicant's inability to provide details relating to this event, and found that the Applicant's allegation that she was pursued by the police officers to be unsupported by credible evidence. The RPD found that in the absence of any reasonable explanation, it was improbable that the Applicant, who was six-months pregnant at the time, managed to escape four or five police officers as they approached her side of the car and to successfully run away, while evading gun shots fired in her direction;
- v) The Applicant provided inconsistent evidence as to previous interactions with police officers. The Applicant testified that before December 25, 2013, neither she nor any of her family members had had any interactions with the police; however, in her Basis of Claim [BOC] narrative, the Applicant indicated that two police officers came to her home on December 10, 2013, and spoke to her husband. When questioned about the inconsistency, the Applicant testified that she did not know why she forgot to mention this previous encounter;
- vi) When questioned about the reasons why the Mexican authorities would be interested in pursuing the Applicant, she testified that she did not know.

[8] The RPD further found that the Applicant failed to establish a nexus to the Convention ground of political opinion, and that she is not a "person in need of protection", under sections 96 and 97 of the IRPA respectively.

V. Relevant Legislative Provisions

[9] The following are the relevant legislative provisions of the IRPA:

Convention refugee

96. A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
- (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

Person in need of protection

97. (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally

- (a) to a danger, believed on substantial grounds to exist, of torture within the

Définition de « réfugié »

96. A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :

- a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
- b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.

Personne à protéger

97. (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :

- a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture

meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

- (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country,
- (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,
- (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and
- (iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

(2) A person in Canada who is a member of a class of persons prescribed by the regulations as being in need of protection is also a person in need of protection.

au sens de l'article premier de la Convention contre la torture;

b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :

- (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,
- (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas,
- (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles,
- (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.

(2) A également qualifié de personne à protéger la personne qui se trouve au Canada et fait partie d'une catégorie de personnes auxquelles est reconnu par règlement le besoin de protection.

VI. Arguments

[10] The Applicant claims that she faces persecution based on her perceived political opinion, as well as a personalized risk to life or cruel and unusual punishment.

[11] The Applicant submits that the RPD erred in the following respects:

- i) In its credibility findings, which are unreasonable;
- ii) In its analysis of the Convention ground of political opinion under section 96;
- iii) In providing insufficient reasons and lack of analysis under section 97.

[12] The Respondent submits that credibility is at the very core of the RPD's jurisdiction and that the RPD is entitled to draw adverse findings of credibility. The Respondent contends that the RPD's findings are reasonable and the Applicant has submitted no credible evidence which may support her claim.

VII. Issues

[13] The application reveals the following issues:

- i) Are the RPD's credibility findings unreasonable?
- ii) Did the RPD err in its application of sections 96 and 97 of the IRPA?

VIII. Standard of Review

[14] Consistent with the jurisprudence, the Court owes considerable deference to the RPD's credibility findings, which fall within the RPD's area of expertise and therefore are to be reviewed on a reasonableness standard (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47 [*Dunsmuir*]; *Aguebor v Canada (Minister of Employment and Immigration)*, (1993), 160 NR 315; *Herrera v Canada (Minister of Citizenship and Immigration)*, 2007 FC 979 at para 14 [*Herrera*]).

IX. Analysis

a) Are the RPD's credibility findings unreasonable?

[15] The inconsistencies raised by the RPD, as shown above, are central to the Applicant's claim in that they undermine the Applicant's alleged subjective fear and risk upon return.

[16] The RPD assessed and allocated little weight to the exhibits evidencing possible ties between the Applicant's husband and Sergio Torres, a local politician who is rumoured to have links to members of the drug trade, as they fail to corroborate the elements central to the Applicant's claim and are rather speculative in nature. The RPD also gave little probative value to the letter from the Applicant's mother, as it is undated, vague, and provides second-hand information.

[17] The Court finds that the RPD's credibility findings, towards which the Court owes considerable deference, can rationally be supported (*Dunsmuir*, above at para 41). The RPD

was entitled to find that the Applicant's inability to provide reasonable explanations for the significant omissions and contradictions in her claim undermines her credibility. The RPD's credibility findings are reasonable and do not form a basis upon which this Court may intervene.

b) Did the RPD err in its application of sections 96 and 97 of the IRPA?

[18] The Applicant argues that the RPD erred in its analysis of the Convention ground of political opinion under section 96 of the IRPA.

[19] Contrary to the Applicant's claim, the Court is satisfied that the RPD's analysis under section 96 rests anchored in the objective and subjective evidence. In its reasons, the RPD stated:

Although the panel appreciates that the claimant may not have much information regarding the reasons why her husband may have been abducted, she has not established that she would be perceived as opposing the state because of an abduction of her husband by corrupt officers. Although claimant's counsel submitted significant documentary evidence regarding enforced disappearances in Mexico (Exhibit 5, pp 1-237), which is consistent with the Immigration and Refugee Board's (the "Board") documentary evidence, the onus is on the claimant to link her circumstances to the documentary evidence and the panel finds that she has not done so. Accordingly, based on the totality of the evidence the panel finds that the claimant has not established a nexus and has not satisfied the burden that she would face more than a mere possibility of persecution if she returns to Mexico.

(RPD's decision, at para 23)

[20] Furthermore, the RPD relied on the Immigration and Refugee Board's *Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution* in assessing the Applicant's particular circumstances. The RPD noted that the Applicant's age, gender and social-cultural

context may have contributed to her limited knowledge of her husband's associations, work activities and possible ties with the drug trade or corrupt officials. Moreover, the RPD assessed whether the Applicant's political opinion may have been imputed or perceived as such by her alleged persecutors (*Canada (Attorney General) v Ward*, [1993] 2 SCR 689 at paras 81-83).

[21] The Applicant further submits that it was incumbent upon the RPD to conduct a separate analysis under section 97 of the IRPA.

[22] As noted by the RPD, the Applicant has not provided sufficient reliable evidence to establish, on a balance of probabilities, that she faces a personal risk to her life or cruel and unusual treatment or punishment upon return to Mexico. In consideration of the RPD's previous credibility findings, a separate analysis for the purpose of section 97 was unwarranted (*Kaur v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1710 at para 16; *Herrera*, above at para 28).

X. Conclusion

[23] In view of the above, there is no basis for this Court to intervene.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. There is no question of general importance to be certified.

“Michel M.J. Shore”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3910-14

STYLE OF CAUSE: ALONDRA ANAHI DELGADO LOPEZ v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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