

Federal Court



Cour fédérale

**Date: 20150421**

**Docket: IMM-7293-14**

**Citation: 2015 FC 516**

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

**Ottawa, Ontario, April 21, 2015**

**PRESENT: The Honourable Mr. Justice Noël**

**BETWEEN:**

**GLORIA ESPERANZA GIRALDO CORTES**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Introduction

[1] This is an application for judicial review by Gloria Esperanza Giraldo Cortes [the applicant] under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], of a decision dated September 25, 2014, by the Refugee Protection Division [RPD] of

the Immigration and Refugee Board of Canada rejecting the applicant's claim for refugee protection under sections 96 and 97 of the IRPA.

II. Alleged facts

[1] The applicant is a citizen of Columbia.

[2] She alleges that she met Elkin De Jesus Osario Sanchez [Elkin] in 2008, and that he moved in with her and her sister in February 2010. Elkin was killed on April 25, 2013.

[3] A little later, on May 15, 2013, the applicant received a threatening letter from the Black Eagles, a paramilitary group, informing her that she had to repay Elkin's debt to them. The applicant says that she was not aware of this debt.

[4] Two people then showed up at the applicant's house on June 5, 2013, to tell her that they would return to discuss the debt and Elkin's possessions. On June 25, 2013, members of the Black Eagles showed up and told her that she had to pay off the debt, which she refused to do.

[5] The applicant says that on June 26, 2013, she received a second threatening letter demanding that she pay the debt or she would be condemned to death.

[6] The applicant filed a complaint with the Office of the Attorney General on July 3, 2013.

[7] On July 5, 2013, the applicant alleges that she hid at a female friend's house in Bogota.

[8] In 2013, the applicant obtained a visa to the United States.

[9] Around the end of April 2014, the applicant says she received a call from the Black Eagles informing her that they knew that she was in Bogota, and that they would track her down and make her answer for her actions.

[10] The applicant then left Colombia for the United States on June 3, 2014, and arrived in Canada on June 4, 2014, where she claimed refugee protection.

[11] On June 25, 2014, the RPD determined that the applicant was neither a refugee nor a person in need of protection under sections 96 and 97 of the IRPA. This is the impugned decision.

### III. Impugned decision

[12] From the outset, the RPD specified that the main issue in this case is the applicant's credibility.

[13] Regarding the debt claimed by the Black Eagles, the RPD found that the applicant's testimony was inconsistent with the answers given during her interview at her port of entry in Canada.

[14] In regard to the applicant's complaint to the Attorney General on June 25, 2013, the RPD found it inconsistent that she had not provided a description of her alleged attackers. This

complaint does not contain any information about the threatening letters received on May 15, 2013 and June 26, 2013. The RPD found the applicant's explanation weak on this point. Thus, the panel gave no weight to the two threatening letters or to the complaint she had filed.

[15] The RPD also determined that the applicant's behaviour was inconsistent with that of a person fearing for their life, given that she testified that she was in imminent danger in Columbia as of April 28, 2014, but she only left Columbia more than a month later because she needed time to quit her job, pay her debts, get her affairs in order and buy her plane ticket.

[16] The RPD gave no evidentiary value to the extract from the civil registry mentioning the death of Elkin on April 25, 2013.

[17] After reviewing all of the evidence, the RPD finally concluded that the applicant was not a refugee under sections 96 and 97 of the IRPA.

#### IV. Parties' submissions

[18] First of all, the applicant alleges that the RPD's determination in regard to the inconsistency in the information provided about the debt demanded by the Black Eagles is unreasonable because the RPD was TRANSLATION] "grossly negligent with regard to the applicant's reply" (Applicant's Record [AR] page 25 at para 19). The applicant also submits that the RPD did not ask about the points that appeared confused or listen objectively to the applicant's answers. The respondent replies that the RPD highlighted several discrepancies between the applicant's testimony, her statements at the port of entry, and the documentary

evidence in the record on the issue of the amount owed. Consequently the RPD validly concluded that the applicant's explanations undermined her credibility.

[19] The applicant also claims that the RPD did not take into account the conditions in Columbia in its assessment of her credibility. She also suggests that the RPD improperly assessed the evidence submitted, namely, the complaint filed with the Office of the Attorney General and the two threatening letters received. The applicant states that her testimony at the hearing explained these documents, and that the RPD misunderstood the facts and her testimony in regard to this evidence. The applicant also maintains that the RPD erred in failing to assign any probative value to the extract from the civil registry on the death of Elkin, because the information contained in this evidence is consistent with her story. On the issue of the conditions in Columbia, the respondent is of the opinion that the RPD took into account her situation in Columbia, considered the documentary evidence and gave the applicant the opportunity to explain herself at the hearing. In terms of the documents filed by the applicant, the respondent argues that they cannot be used to establish the applicant's credibility when she has been found not to be credible. The weighing of evidence falls within the jurisdiction of the RPD.

[20] The applicant also submits that her explanations about the delay between her determination that her life was in danger and her departure from Colombia is reasonable, based on her personal experience. The applicant claims that the RPD's findings about her behaviour being inconsistent with that of a person fearing for their life are unreasonable. The respondent replies that the RPD's finding on this point is reasonable, because the applicant's behaviour does

not demonstrate any fear of persecution, and the RPD could take into account the applicant's explanations about the delay in its determination on the merits of her fear of persecution.

[21] The applicant also alleges a reasonable apprehension of bias on the part of the RPD. The respondent argues that the applicant's apprehension of bias was not raised in a timely manner, that a reasonable apprehension of bias cannot be raised after the negative outcome of a refugee protection claim, and that in any case the applicant's argument does not meet the objective standard for determining an apprehension of bias. Thus, the respondent is of the opinion that this argument by the applicant should be ignored by the Court.

[22] Finally, the applicant argues that the RPD breached its duty of procedural fairness by failing to take into account the applicant's story in its analysis, and by not assigning any weight to the other aspects of her refugee protection claim, which were not discussed in the decision. The respondent argues that the RPD's decision complies with the principles of procedural fairness because the RPD took into account the evidence in the record and the applicant's explanations, and that the RPD's decision is clear, well reasoned and unambiguous.

## V. Issues

[23] After reviewing the parties' arguments and their respective files, I would word the issues in dispute as follows:

1. Did the RPD err in its assessment of the applicant's credibility?

2. Did the RPD breach procedural fairness?

VI. Standard of review

[24] The issue of the assessment of the applicant's credibility is one of fact. Thus, the standard of reasonableness applies to this case (*Salazar v Canada (Minister of Citizenship and Immigration)*, 2013 FC 466 at para 36; *Molano v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1253 at para 26 [*Molano*]; *Ruiz v Canada (Minister of Citizenship and Immigration)*, 2012 FC 258 at para 20). This Court will only intervene if the decision is unreasonable, that is, if it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] 1 SCR 190 at para 47). In regard to the issue of procedural fairness, in this case, the correctness standard applies (*Re: Sound v Fitness Industry Council of Canada*, 2014 FCA 48 at paras 34-35).

VII. Analysis

A. *Did the RPD err in its assessment of the applicant's credibility?*

[25] Issues of credibility and assessment of the evidence by the RPD are within the RPD's areas of expertise and, therefore, deserving of deference (*Molano*, above at para 26; *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paras 27 and 31 [*Rahal*]). Thus, this Court will only intervene if the decision is based on "an erroneous finding of fact made in a perverse or capricious manner, or if it made its decision without regard to the material before it" (*Rahal*, above at para 35). In this case, the RPD's determinations in regard to credibility are reasonable.

[26] As regards the RPD's findings about the amount of the debt, the RPD pointed out that the applicant had provided several different versions on this matter. Indeed, at the hearing, the applicant indicated that she did not know how much money the Black Eagles wanted, whereas in her interview at the port of entry, she stated that she had been informed that several million pesos were owed. She later testified that she had figured out that it was a matter of several million pesos. Based on the information provided by the applicant, it was reasonable for the RPD to draw a negative inference about the applicant's credibility.

[27] The RPD's conclusions, in regard to its decision not to assign any weight to the two threatening letters and to the alleged complaint filed with the Office of the Attorney General, are reasonable. Indeed, the RPD found inconsistencies in the applicant's explanations about the fact that the complaint filed with the Office of the Attorney General did not mention the two threatening letters, including the one dated June 26, 2013, that was clearly a death threat against the applicant, stating [TRANSLATION] "as of this point we have sentenced you to death, along with everyone close to your family" (CTC at page 134). Given that the RPD deemed the applicant not to be credible, it is reasonable for the RPD not to assign any weight to these letters.

[28] The RPD also noted that the applicant testified that she could identify the faces of the people who came to her place on June 25, 2013, and that she alleged that she had filed a complaint with the Office of the Attorney General in order to protect herself against her attackers. The RPD found it inconsistent that the applicant had not provided a description of her alleged attackers simply because the officers in the Attorney General's Office had not asked her for any. This conclusion is reasonable. It is within the RPD's jurisdiction to assess the evidence



that is presented to it, and to identify any resulting contradictions or incongruities (*Florea v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 598; *Varon v Canada (Minister of Citizenship and Immigration)*, 2015 FC 356 at para 45; *Akinlolu v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 296; [1997] 70 ACWS (3d) 136 at para 13; *Nijjer v Canada (Minister of Citizenship and Immigration)*, 2009 FC 1259 at para 14).

Consequently, the RPD's finding that the applicant's behaviour is incompatible with that of a person fearing persecution is reasonable.

[29] The circumstances surrounding the applicant's departure to come to Canada through the United States do not demonstrate a danger to her life. She bought her plane ticket on April 28, 2014, continued working to pay her debts, and even had a visa for the United States since 2013. The RPD had the facts to find that the applicant's behaviour was incompatible with that of a person who fears for their life.

B. *Did the RPD breach procedural fairness?*

[30] The applicant's argument that the RPD breached its duty of procedural fairness by not taking into account the applicant's story in its analysis and by failing to assign significance to the other aspects of the refugee protection claim must also be rejected. In its decision, the RPD demonstrated a good understanding of the facts, compared the applicant's testimony to the documents in her file, and made direct references to the evidence and to her interview at the port of entry to Canada. The RPD also specified that it had reviewed all of the evidence. Thus, the RPD's decision is properly reasoned, and there is no uncertainty as to the RPD's reasons for rejecting the refugee protection claim. There was no breach of procedural fairness in this case

(*Abdeli v Canada (Minister of Public Safety and Emergency Preparedness)*, 2006 FC 1047 at para 16).

[31] In regard to the alleged apprehension of bias, I agree with the respondent that this argument had not been raised at the first opportunity, that is, before the RPD, and that this argument was only advanced after the RPD's negative decision. Thus, the applicant is now precluded from raising this argument on judicial review (*Abedalaziz v Canada (Minister of Citizenship and Immigration)*, 2011 FC 1066 at para 34; *Singh v Canada (Minister of Citizenship and Immigration)*, 2005 FC 35 at para 18; *Hernandez v Canada (Minister of Citizenship and Immigration)*, [1999] FCJ No. 607, 91 ACWS (3d) 811 at para 6). Thus, this argument is rejected.

#### VIII. Conclusion

[32] The RPD's decision is reasonable, and there is no need for this Court to intervene. The panel's decision therefore falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. The decision is upheld.

[33] The parties were invited to submit questions for certification, but none were submitted.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed.
2. No question is certified.

“Simon Noël”

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Judge

Certified true translation  
Michael Palles

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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