

Federal Court



Cour fédérale

**Date: 20151127**

**Docket: IMM-2494-15**

**Citation: 2015 FC 1325**

**[UNREVISED ENGLISH CERTIFIED TRANSLATION]**

**Montréal, Quebec, November 27, 2015**

**Present: The Honourable Mr. Justice Shore**

**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 under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA) of a decision by the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada, dated May 7, 2015, dismissing the

applicant's application to be recognized as a refugee or as a person in need of protection within the meaning of sections 96 and 97 of the IRPA.

## II. Facts

[2] The applicant, Gloria Esperanza Giraldo Cortes, is a citizen of Colombia.

[3] The applicant primarily alleged that she had to leave Colombia in June 2014 following death threats that she received from the Black Eagles in Colombia. These threats were due to the fact that her husband, who was murdered, owed money to the Black Eagles. On June 3, 2014, the applicant left Colombia and on June 4, 2014, she made a claim for refugee protection in Canada.

[4] In a decision dated September 25, 2014, the RPD refused the applicant's claim for refugee protection. This decision was subject to judicial review before this Court; and, at the same time, an appeal was made before the RAD.

[5] On April 21, 2015, Justice S. Noël dismissed the application for judicial review finding that the RPD's conclusions regarding the applicant's credibility were reasonable; and that the RPD had met its duty of procedural fairness (*Cortes v Canada (Minister of Citizenship and Immigration)*, 2015 FC 516).

[6] Then, on May 7, 2015, the RAD dismissed the applicant's appeal, finding that the RPD's findings on the applicant's credibility do not require its intervention.

[7] First, the RAD recognized, after hearing the applicant's testimony before the RPD, that the RPD had erred when it found that the applicant was inconsistent with respect to the debt due by her husband and that applicant's testimony in this regard was not supported by all the evidence. However, the RAD found that the RPD's error was not determinative.

[8] Furthermore, the RAD found that the RPD did not commit any error when it granted little probative value to the documents provided by the applicant. The RAD also found that the RPD's findings regarding Exhibit C-5 were correct. Finally, the RAD found that the RPD had not committed an error in finding that the applicant's conduct was inconsistent with that of a person who fears for her life.

[9] As part of this judicial review, the applicant alleged that the RAD committed several errors, in particular:

- The RAD neglected to discuss Exhibit C-2, i.e. the death certificate of the applicant's husband;
- The RAD did not consider all the explanations provided by the applicant regarding Exhibits C-3, C-4 and C-5, it should have given probative value to this evidence and the RAD's findings on these Exhibits are unreasonable;
- The RAD's findings have no basis and do not correspond to a possible, reasonable outcome and the RAD shows excessive zeal;
- The RAD's duty of deference to the RPD must be less for questions of assessment of evidence than for the RPD's findings of the credibility of a refugee claimant;

- The negative conclusions of the RAD are based on [TRANSLATION] “fewer elements” than the RPD; and,
- The RAD was mistaken in its analysis of the applicant’s credibility on the question of subjective fear of persecution.

[10] In sum, all of the applicant’s arguments relate to an erroneous assessment of the applicant’s credibility and the evidence submitted by her.

[11] The respondent stated that the RAD reasonably found that the RPD erred in its analysis. Furthermore, the respondent submitted that, regardless, the applicant is estopped from exercising an application for judicial review before this Court, given that this Court has already held that the RPD’s decision was reasonable.

### III. Issue

- 1) Is the applicant estopped from making an application for judicial review of the RAD’s decision before this Court?
- 2) Did the RAD err in its assessment of the evidence on the record and in its findings of the applicant’s credibility?

### IV. Analysis

- A. *Is the applicant estopped from making an application for judicial review of the RAD’s decision before this Court?*

[12] It is true that the decision of Justice Noël is an important factor that the Court must take into consideration in the assessment of this case. However, given that the standard applicable by the RAD to the RPD's decisions differs from the standard applicable by this Court to the RPD's decisions, the Court is of the view that the applicant is not estopped from requesting that this Court conduct a judicial review of the RAD's decision; Moreover, the undersigned judge cannot estop this file because this is a thing already decided for the fact that Justice Peter B. Annis of this Court has already agreed to hear this file with the decision issued by the RAD.

B. *Is the RAD decision reasonable?*

[13] This Court's case law is consistent in that the credibility findings and the RAD's assessment of the evidence must be reviewed on a standard of reasonableness given that they are questions of fact and mixed fact and law. Accordingly, this Court has a high duty of deference to the RAD's findings of credibility and its appreciation of the evidence (*Du v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1094 at para 55; *Elhassan v Canada (Minister of Citizenship and Immigration)*, 2013 FC 1247 at para 15) and will not intervene unless the RPD's credibility findings, also subsequently accepted on appeal by the RAD, are imprecise and vague without particulars (*Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at para 46).

[14] In this case, and as previously stated, all the applicant's arguments relate to what she considers to be a poor assessment of the evidence by the RAD and erroneous findings on her credibility.

[15] The Court, after carefully reviewing all the evidence on the record, found that the RAD made reasonable conclusions regarding its assessment of the evidence. The RAD showed that it conducted an in-depth review of the file. First, it recognized that the RPD had erred in finding that the applicant had provided inconsistent testimony regarding the debt due by her ex-husband, but that this error was not determinative. Afterward, the RAD, while giving deference to the RPD's findings, reviewed the evidence on which the RPD relied to determine that the applicant's credibility was affected. The applicant argued that the RAD committed an error since its analysis is based on fewer elements than the RPD's negative decision. This argument must be rejected. If the RAD found that some elements, on their face, were sufficiently strong to determine that the RPD's finding was reasonable, it was not necessary for the RAD to review all the elements raised by the RPD.

[16] Furthermore, the applicant argued that the RAD had not considered all its explanations, that it erred in its analysis of the applicant's subjective fear, and that the RAD should have awarded greater probative value to some evidence. Knowing that this Court's role is not to reconsider the evidence and substitute its own conclusions for that of the RAD (*J.M. v Canada (Minister of Citizenship and Immigration)*, 2015 FC 598 at para 48; *Canada (Citizenship and Immigration) v Khosa*, [2009] 1 SCR 339, 2009 SCC 12 at para 59 and 61), the Court found that it must not intervene since the RAD's findings in this regard are sufficiently justified. In sum, the Court may disagree with the RAD's findings, however, that is not the question. The question is whether the RAD's decision falls within the range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 at para 47).

V. Conclusion

[17] Given the above-noted findings, the Court concludes that the RAD's decision is reasonable. Therefore, the application for judicial review is dismissed.

**JUDGMENT**

**THE COURT ORDERS AND ADJUDGES that** the application for judicial review be dismissed. There is no question of importance to be certified.

“Michel M.J. Shore”

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Judge

Certified true translation  
Catherine Jones, Translator



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-2494-15

**STYLE OF CAUSE:** GLORIA ESPERANZA GIRALDO CORTES v THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** MONTRÉAL, QUEBEC

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