

Federal Court



Cour fédérale

Date: 20160229

Docket: IMM-3647-15

Citation: 2016 FC 248

Ottawa, Ontario, February 29, 2016

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

ROSA MARLENYS CORDERO PANIAGUA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is a judicial review of a decision of the Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB] dated July 21, 2015, determining that the Applicant is not a Convention refugee pursuant to section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27* [IRPA] nor a person in need of protection pursuant to section 97 of IRPA.

[2] For the reasons that follow, this application is dismissed.

I. Background

[3] The Applicant is a citizen of the Dominican Republic. She alleges that from approximately 2001 until 2011, she was in a relationship with a man [the Assailant] who abused her over the course of the relationship. She had a daughter with him in 2004. She obtained a protection order against him on December 20, 2011 but alleged that he continued to come to her house, threaten and assault her.

[4] The Applicant states that on January 2, 2012 she made a report to the police, alleging that the Assailant came to her house and assaulted her. She subsequently moved to the capital, Santa Domingo, and had no further contact with him until April 25, 2015 when she alleges that he came to her grandmother's house, assaulted her and attempted to abduct their daughter. The police were called and he left. Between that incident and the Applicant's departure to Canada where she claimed protection, the Applicant claims she received phone calls from the Assailant threatening that he would kill her. The Applicant's cousin has informed her that he is still seeking her.

II. RPD Decision

[5] The determinative issues in the RPD's decision were credibility and state protection. The RPD also made a finding under s.107(2) of IRPA that the Applicant's claim had no credible basis.

[6] The RPD found that the Applicant's evidence contained multiple contradictions, inconsistencies and omissions, particularly as between her Basis of Claim [BOC] narrative and her testimony and the documentary evidence. It did not find her explanations to be reasonable. With respect to the police reports, based on their lack of detail combined with the RPD's concerns about the Applicant's explanations in response to its questions, it concluded these documents were not genuine.

[7] The RPD noted inconsistencies or implausibilities in the Applicant's evidence surrounding the 2011 protective order and how she obtained a passport but found these were not central to the claim and could have been a reflection of the Applicant's background and education.

[8] No weight was given to what the RPD described as letters in support of the claim, due to their general lack of detail and inconsistency with the Applicant's narrative and testimony. The RPD found that these too were likely fabricated for purposes of the claim.

[9] In considering state protection, the RPD found that the documentary evidence supported that violence against women was widespread in the Dominican Republic and there were concerns about the effectiveness of the state's efforts to address the problem. However, this was outweighed by the evidence of the Applicant's own experience. She had obtained a protection order in 2011, and when the police were called in 2015, they came and the Assailant left. There were some incidents she did not report to the police, and the RPD found that the reports she did make were vague and provided little information on the Assailant's whereabouts or profile. The

RPD found that, even if the evidence presented by the Applicant was credible, it did not rebut the presumption of state protection.

III. Issues and Standard of Review

[10] The Applicant's written submissions state the following issues for the Court's consideration:

- A. Is the RPD's no credible basis finding reasonable?
- B. Is the RPD's no credible basis finding sufficient to set aside the entire decision?
- C. Is the RPD's state protection finding reasonable and made in accordance with the *IRB Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution?*

[11] At the hearing, the Respondent agreed with the Applicant's position that, if the Court were to set aside the no credible basis finding under s.107(2) of IRPA, this would be sufficient to set aside the RPD's decision as a whole, not just that finding. This Court's decisions in *Levario v Canada (Minister of Citizenship and Immigration)*, 2012 FC 314 [*Levario*] and *Pournaminivas v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1099 [*Pournaminivas*] were cited as authority for this result, from which I would see no reason to depart. The Applicant also acknowledged that, if she were unsuccessful in challenging the no credible basis finding, her state protection arguments could not result in success on this judicial review. As such, the sole issue for the Court to consider in this application is whether the RPD's no credible basis finding is reasonable.

[12] The parties take the position, and I concur, that the standard of review applicable to the issues raised by the Applicant is reasonableness (see *Pournaminivas*).

IV. Submissions of the Parties

A. *Applicant's Position*

[13] The Applicant argues that the RPD's no credible basis finding is not reasonable as it failed to have regard to all the evidence. The documents that the Applicant submits were not properly considered include: a letter from a court in the Dominican Republic confirming that a protection order had been issued, a medical note confirming the Applicant's treatment for injuries, her daughter's birth certificate corroborating her relationship with the Assailant, and a letter from her daughter's school noting that her daughter was displaying depression, low self-esteem and aggression and that the Applicant had attributed this behaviour to problems with the girl's father including aggression. The Applicant relies on *Levario* at paras 18-19 as authority that the RPD cannot make a no credible basis finding if there is any credible and trustworthy evidence that could support a positive finding.

[14] The Applicant refers to the recent decisions of Justice Boswell in *Pournaminivas*, where the failure of the RPD to consider the evidence of two witnesses meant that it had failed to properly consider whether there was any credible evidence to support the claim, and of Justice Zinn in *Chen v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1133 [*Chen*], which warns against conflating a finding that a claimant is not credible with a finding that there is no evidence that could support a positive decision.

[15] Specifically, the Applicant submits that the medical note corroborates one of the alleged incidents, as it refers to treatment for trauma to the Applicant's face on April 25, 2015, the date of the alleged encounter with the Assailant and attempted abduction of their daughter. The Applicant submits that the RPD similarly erred in not considering a letter from the Court in San Jose de Ocoa, confirming the existence of a protection order dated December 20, 2011, which the Applicant argues contains marks of authenticity as well as official recognition of the threat. She argues that, if this letter was accepted, it would have corroborated the Applicant's testimony and BOC in which she refers to reporting the violence in 2011. The Applicant also submits that, by not considering the birth certificate of the Applicant's daughter or the report from her school, the RPD fails to recognize that the certificate corroborates existence of the relationship and that the report corroborates the father's abuse.

[16] The Applicant acknowledged that the RPD makes a negative finding related to "letters in support of the claim", based on their general lack of detail and inconsistency with the claimant's narrative and testimony, but argues that this finding does not refer to the medical note or the other documents the Applicant alleges were overlooked. The Applicant also argues that, even if this finding does relate to this evidence, the no credible basis conclusion was still unreasonable, as the finding does not represent a meaningful analysis of this evidence

B. *Respondent's Position*

[17] The Respondent argues that the no credible basis finding was reasonable, as the Applicant did not demonstrate that there was independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim.

[18] The Respondent submits that the negative finding related to “letters in support of the claim” is a reference which includes the four documents that the Applicant says were not considered. The Respondent notes that the RPD’s finding footnotes an exhibit which includes all personal documents submitted by the Applicant.

[19] However, it is also the Respondent’s position that, even if these documents were not considered and rejected by the RPD, they are not capable of sustaining a positive determination of the Applicant’s claim. The medical note contains no commentary as to the origins of the Applicant’s injury, the court letter contains little detail, and neither the birth certificate nor the school report establishes a claim based on domestic abuse.

V. Analysis

[20] Both parties refer to the Federal Court of Appeal’s decision in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 [*Rahaman*] as explaining the circumstances in which a finding of no credible basis can be made:

[28] Moreover, the wording of subsection 69.1(9.1) provides that a “no credible basis” finding may only be made if there was no credible or trustworthy evidence on which the Board member could have upheld the claim. In other words, the Board member may not make a “no credible basis” finding if there is credible or trustworthy evidence before it that is capable of enabling the Board to uphold the claim, even if, taking the evidence as a whole, the Board decides that the claim is not established.

[29] However, as MacGuigan J.A. acknowledged in *Sheikh, supra*, in fact the claimant’s oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim.

[30] On the other hand, the existence of *some* credible or trustworthy evidence will not preclude a "no credible basis" finding if that evidence is insufficient in law to sustain a positive determination of the claim. Indeed, in the case at bar, Teitelbaum J. upheld the "no credible basis" finding, even though he concluded that, contrary to the Board's finding, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the documentary evidence. However, the claimant's evidence on this issue was not central to the Board's rejection of his claim.

[21] I have considered whether the RPD's finding, that the "letters in support of the claim" should be given no weight, relates to the four documents on which the Applicant's arguments are based. While I acknowledge that this finding footnotes a documentary exhibit that identifies a list of documents including these four, my conclusion is that the RPD was not intending to refer to these four documents. The list of documents in the exhibit does include a number of documents described as letters, but those relied on by the Applicant are described in this list as certificates and reports.

[22] More significantly, the RPD's decision to give the "letters" no weight is said to be "due to their general lack of detail and inconsistency with the claimant's narrative and testimony as set out above". I agree with the Applicant's argument that this appears to be a reference to the preceding portion of the RPD's decision, in which its analysis of the Applicant's evidence includes consideration of letters from the Applicant's neighbour and cousin and identifies both inconsistencies and lack of detail with respect to those documents. As such, my conclusion is that it is these letters to which the RPD was referring.

[23] However, it is still necessary to consider whether the RPD's failure to expressly assess these documents renders its no credible basis finding unreasonable. As noted in paragraph 30 of *Rahaman*, such a finding will not be precluded by evidence that is insufficient to sustain a positive determination of the claim. This requires assessment of whether the documents relied on by the Applicant could be sufficient to sustain such a determination.

[24] The birth certificate establishes only the Assailant's paternity of the Applicant's daughter and is of little assistance to the Applicant in establishing the basis for her claim. The letter from the daughter's school refers to the Applicant's statement to the school principal that her daughter's behaviour is due to problems with the girl's father including aggression. However, this is at best a record that these statements were made by the Applicant. At paragraph 16 of *Chen*, Justice Zinn refers to the principle derived from *Rahaman* as being that, where a claimant adduces independent and credible evidence that is capable of supporting a positive decision, then the claim will have a credible basis even if the claimant's testimony is found not to be credible. In the context of the adverse credibility finding made by the RPD with respect to the Applicant's testimony, the school letter's recitation of the Applicant's statements cannot be regarded as independent evidence in support of the claim.

[25] The medical report represents independent evidence of an injury, but it contains no evidence of the cause of the injury. The Applicant relies on *Chen*, in which the no credible basis finding was set aside on the basis of the panel's failure to consider a medical report which corroborated the applicant's story of mistreatment he suffered at the hands of Cameroonian authorities. However, the decision does not describe the information that was contained in this

report or how it corroborated the applicant's story. I am therefore guided more by the decision in *Marquez v Canada (Minister of Citizenship and Immigration)*, 2013 FC 325, at paragraph 13 of which Justice Snider concluded that the medical information in that case did not have the probative value necessary to undermine a no credible basis finding, as it provided no information other than the nature of the injuries, which could have been caused in many different ways. I reach the same conclusion with respect to the medical report in this case.

[26] Finally, the Applicant relied on the certificate from the court in the Dominican Republic, confirming that a protection order had been issued on December 20, 2011. The Respondent argues that the RPD addressed the protection order in its decision, noting that there were inconsistencies regarding the claimant's evidence on the process for obtaining the order. I do not consider this to represent a rejection by the RPD of that evidence, as the RPD goes on to note that this was not central to the Applicant's claim and may have been a reflection of her education and background. However, the RPD's reference to the 2011 protection order as not central to the Applicant's claim is consistent with its analysis, which focuses on the subsequent events in 2012 to 2015, concluding with the finding that the Applicant had failed to present any evidence which is credible or trustworthy on a balance of probabilities to support her allegations of the events she reported occurred from 2012 to 2015.

[27] In *Rahaman*, the Federal Court of Appeal dismissed the appeal of Justice Teitelbaum's decision which, the Court noted at paragraph 30, had upheld the board's no credible basis finding even though Justice Teitelbaum concluded that, contrary to the board's decision, the claimant's testimony concerning the intermittent availability of police protection was credible in light of the

documentary evidence, the claimant's evidence on this issue not being central to the board's rejection of his claim. In the case at hand, the RPD considered the 2011 protective order but concluded it not to be central to the Applicant's claim. As that conclusion was not, in my view, unreasonable, the document confirming the issuance of the order does not represent a basis to interfere with the RPD's no credible basis finding.

[28] My conclusion is that the four documents upon which the Applicant's position relies, whether considered separately or together as the Applicant advocates, would not be capable of sustaining a positive determination of her claim. I therefore find that the RPD's failure to assess these documents does not render the RPD's no credible basis finding unreasonable.

[29] Neither party proposed a question of general importance for certification for appeal.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed. No question is certified for appeal.

“Richard F. Southcott”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3647-15

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MINISTER OF CITIZENSHIP AND IMMIGRATION

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