

Federal Court



Cour fédérale

Date: 20161207

Docket: IMM-1986-16

Citation: 2016 FC 1343

Toronto, Ontario, December 7, 2016

PRESENT: The Honourable Madam Justice Strickland

BETWEEN:

**DIXON JAVIER CAMPO DIAZ,
LEIDY JOHANA GARCIA PAREDES, AND
NICOLAS ANDRES CAMPO GARCIA**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board of Canada (“RPD”) dated April 6, 2016 denying the Applicants’ claim to be Convention refugees or persons in need of protection. For the reasons below, I have concluded that the application must be dismissed.

Background

[2] The Applicants are Leidy Johana Garcia Paredes, her spouse, Dixon Javier Campo Diaz, and their minor child, Nicolas Andres Campo Garcia. They are nationals of Columbia who claim that they fear persecution at the hands of the Fuerzas Armadas Revolucionarias de Colombia (“FARC”). In that regard, Mr. Diaz alleges that on September 15, 2015, he met with an old friend who was accompanied by two other men unknown to him. In the course of conversation, Mr. Diaz mentioned that his wife worked for an airline company. The two men asked if his wife could take two suitcases for them from Bogota to Cali, Colombia. Mr. Diaz refused as he suspected that the men wanted to transport drugs or something else that was illegal.

[3] Mr. Diaz alleges that on September 16, 2015 he received an anonymous telephone call advising that if he did not do as he was asked he would face consequences and that he should not “mess” with the FARC. Fearing for his life, he filed a report of the incident with the office of the Attorney General on the following day. That office gave him a protection request to file with the local police, which he did on September 21, 2015. Mr. Diaz alleges that on October 11, 2015, he was assaulted by three unidentified men at a bus stop on his way to work, resulting in his hospitalization and being unable to work for 12 days. After this incident he feared for his life and the safety of his family. The Applicants claim that after the assault they refrained from going out in public, Mr. Diaz began working from home, his wife continued to work utilizing a private work chauffeur for transit and their son continued to go to school using a school bus that picked him up and dropped him off at home. The Applicants allege that living in fear became unbearable. They therefore fled to the United States on December 1, 2015, utilizing pre-existing

United States visas, and then travelled to Canada where they claimed refugee status on December 12, 2015.

Decision Under Review

[4] The RPD found that the Applicants were neither Convention refugees nor persons in need of protection, the determinative issue being credibility. The RPD noted Mr. Diaz's evidence that, after the September 16, 2015 phone call, he felt his life and that of his family was in danger. However, that he had not followed up with the police about the protection request. Further, although he stated that he believed a 24 hour police presence at his home would be necessary to keep him safe from the FARC, he had left his wife and child alone and travelled to Arauca for three days to celebrate his mother's birthday, posting photos of the event on his Facebook account. The RPD noted that Mr. Diaz had also posted photos of another social event on October 10, 2015, the day before the assault and on October 12, 2015, the day after. Further, it was not until a second sitting, when questioned by his own counsel, that Mr. Diaz testified that it was only at the first sitting that he realized that his Facebook posts could be seen by the public.

[5] The RPD made adverse credibility findings concerning Mr. Diaz's evidence. It found that it did not make sense that Mr. Diaz would travel out of the city and leave his wife and child vulnerable when he believed they were in danger to the extent that he thought 24 hour police protection would be needed to keep them safe. It found his explanation that he was going to celebrate his mother's birthday not to be credible. When asked if he did anything to ensure his family's safety he testified that he did not tell his wife about the danger. The RPD found this to be nonsensical as it would only serve to aggravate the danger she faced. And, when questioned

about this, Mr. Diaz had changed his evidence and testified that the threat only set in after he had been assaulted.

[6] The RPD also did not accept Mr. Diaz's explanation that he did not realize that the photos posted on his Facebook page were not public until the first hearing date when he was questioned about them. It found that if this were so he would have mentioned it at that time. Further, if he believed that he was in danger and was posting photos of his travel which indicated his destination and that his family was now alone, he would have taken care to ensure that the photos were not public for the FARC to see. The RPD drew a negative inference from this as it did with his explanation as to the posts the days before and after the alleged assaults.

[7] The RPD also did not find it credible that the minor Applicant continued to go to school after the assault when, according to the family's Basis of Claim ("BOC") narrative, the Applicants were in hiding. It did not accept Ms. Diaz's explanation that, in hindsight, she believed that it was dangerous for the child to be sent to school. It concluded that the Applicants' behaviour was inconsistent with their alleged fear and drew a negative inference.

[8] The RPD then assessed the Applicants' personal documentary evidence which included the report to the Attorney General's office, the request for protection document and medical records pertaining to the assault. It noted that the research directorate had advised that it was not able to verify the authenticity of Colombian official documents, however, the RPD referred to and relied upon jurisprudence in support of the proposition that where there are reasons to find a claimant's central allegations to be fraudulent, then documents purporting to corroborate those

allegations may be dismissed as fraudulent or assigned little weight (*Xu v Canada (Citizenship and Immigration)*, 2014 FC 1062 at para 4 (“*Xu*”); *Jia v Canada (Citizenship and Immigration)*, 2014 FC 422 at para 19 (“*Jia*”); *Huang v Canada (Citizenship and Immigration)*, 2015 FC 1250 at para 15 (“*Huang*”)). Accordingly, the RPD rejected the documents or, alternatively, afforded them little weight as being genuine documents but based on a false account of events. The police reports were based only on Mr. Diaz’s statements to the police and provided no evidence of anything found by way of an independent police investigation. The medical reports, if genuine, reflected an assault but did not corroborate that the FARC played a role in the assault.

[9] The RPD concluded, regardless of whether the purported police and medical documents were rejected outright or assessed in terms of weight or specific probative value, on the balance of probabilities the Applicants were not credible and their allegations were false.

Issue and Standard of Review

[10] In my view the sole issue in this matter is whether the RPD’s decision was reasonable. Jurisprudence has previously held that credibility findings of the RPD are reviewable on the reasonableness standard and are owed significant deference (*Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 (CA) at para 4; *Lin v Canada (Citizenship and Immigration)*, 2010 FC 183 at para 8; *Huang* at para 9; *Cao v Canada (Citizenship and Immigration)*, 2015 FC 315 at para 16 (“*Cao*”); *Zhou v Canada (Citizenship and Immigration)*, 2013 FC 619 at para 26 (“*Zhou*”). Similarly, as to the RPD’s assessment of the evidence and findings of fact, the standard of review is reasonableness (*Dunsmuir v New Brunswick*, 2008

SCC 9 at para 53 (“*Dunsmuir*”); *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at para 16 (“*Huang 2011*”); *Zhou* at para 26).

[11] This Court will only interfere with the decision if it lacks justification, transparency and intelligibility and if it falls outside the range of possible, acceptable outcomes, defensible in fact and in law (*Dunsmuir* at para 47).

Analysis

[12] The Applicants submit that the RPD erred by disregarding highly relevant corroborative evidence, including the complaint to the Attorney General’s office, the protection request and the hospital documents, without analyzing them or giving proper reasons for refusing them. The Applicants claim that the RPD had a duty to determine whether particular documents presented by the claimants were genuine or not (*Lin v Canada (Citizenship and Immigration)*, 2012 FC 157 at para 54 (“*Lin 2012*”)) and that corroborating evidence cannot be disregarded on the basis that the RPD has already determined an applicant’s evidence not to be credible, particularly where the evidence that was disregarded directly challenges the final determination of the matter (*Ahmed v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 456 (“*Ahmed*”)). The RPD also disregarded the objective country documentation evidence which supported their allegations.

[13] In my view it is clear from the RPD’s reasons that it had many credibility concerns that were not assuaged by the Applicants’ explanations including that: Mr. Diaz did not advise his wife of the September 16, 2015 threat; he did not follow up with the police about the protection

request document even though he claimed to believe his and his family's lives to be at serious risk requiring 24 hour a day protection; after receiving the threat he left his wife and son alone while he travelled to his mother's birthday celebration and did so without alerting his wife to the threat or taking any precautions for his family's protection in his absence; Mr. Diaz publically posted his travel plans on his Facebook page without ensuring that his privacy settings would restrict access to that information; when faced with this at the first hearing date he gave conflicting explanations which did not include an explanation that he had only become aware of the public nature of the posts when it was put to him by the RPD; and, after he claimed to have realized for the first time the public nature of his posts, he still did not change his privacy settings, although he alleged that his remaining family in Colombia were at risk due to his defiance of the FARC.

[14] The RPD was in the best position to assess the credibility of the Applicants and, based on the record before it and having reviewed the hearing transcripts, I am satisfied that the credibility findings and inferences that it made were reasonably supported by the evidence (*Mantilla Cortes v Canada (Citizenship and Immigration)*, 2008 FC 254 at para 15). As stated by Justice Gleason in *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at para 60:

[60] ... In matters of credibility, as with identity findings, it is my view that intervention by the Court is not warranted if there is some evidence to support the Board's conclusion, if the RPD offers non-generalized reasons for its findings (that are not clearly specious) and if there is no glaring inconsistency between the Board's decision and the weight of the evidence in the record. It does not matter if the RPD's reasons are not perfect or even if the Court agrees with the conclusion, let alone each step in the RPD's credibility analysis. As the case law establishes, matters of credibility are at the very heart of the task Parliament has chosen to leave to the RPD.

[15] The RPD also did not disregard the corroborating personal documentary evidence without reasons. Rather, the RPD made explicit reference to that evidence and explained that because it had found the Applicants' evidence to lack credibility, it considered the documentary evidence to either be fraudulent or to have little probative value. This approach was open to the RPD. The Applicants were found not to be credible on central aspects of their claim – the threat from the FARC, the assault and their subjective fear – it was open to the RPD to ascribe no or little weight to the supporting documentary evidence in that circumstance. As stated in *Xu*, it is reasonable to conclude that if an applicant has fabricated his claim then the document that supported the claim is also a fabrication (at para 4). Similarly, as stated by Justice Annis in *Jia*:

[19] Findings of credibility lie at the heart of a Board's expertise in determining the possibility of testimony and drawing inferences from the evidence. It is well-established that an applicant's overall credibility may affect the weight given to the documentary evidence (*Granada v Canada (Citizenship and Immigration)*, 2004 FC 1766 at para 13; *Hamid v Canada (Employment and Immigration)*, [1995] FCJ No 1293 (QL) (TD) at para 21; *Huang v Canada (Citizenship and Immigration)*, 2011 FC 288 at para 21).

(also see *Huang* at paras 15-16; *Cao* at para 20; and, *Huang 2011* at para 21).

[16] Although the Applicants rely on *Ahmed*, that case is distinguishable as there the decision was found to be unreasonable because the RPD had not provided any explanation for assigning no weight to corroborating evidence once it found the applicant to be not credible. Here the RPD did provide reasons and more recent jurisprudence supports its approach. And, unlike *Lin 2012*, here the RPD did not dismiss the documentary evidence out of hand and without explanation, nor is this a circumstance where the decision turns on the authenticity of the documentation. And, having found the Applicants' story not to be credible, the RPD was not required to consider the

country condition documentation (*Rahaman v Canada (Citizenship and Immigration)*, 2007 FC 1008 at para 17).

[17] The Applicants also submit that the RPD engaged in a microscopic analysis of their testimony in disregard of the totality of the evidence. In support of this the Applicants claim that, when asked why Mr. Diaz travelled to his mother's birthday celebration after being threatened in September, he explained that he had become more fearful and went into hiding after the October assault. The RPD rejected this as a change in evidence, however, this was an error of fact as the BOC narrative stated that the threat became more serious after the assault. The RPD thus erred by disregarding the BOC evidence.

[18] In my view the Applicants' submission fails to take into account the context in which the RPD rejected the evidence or characterized it as a change in evidence. As noted by the RPD, when asked what kind of protection would have been needed to keep him safe from the FARC after the September 2015 telephone threat, Mr. Diaz testified that he felt 24 hour police protection would be required. It was against that testimony that the RPD concluded that alleging the fear only became serious in October after the alleged assault was a change of evidence made in an effort to explain away why he would leave his family alone to attend his mother's birthday celebration and not advise his wife of the threat. I note that the testimony is also inconsistent with the family's BOC narrative in which Mr. Diaz stated that after the phone threat in September 2015 he immediately feared for his life as he knew what the FARC was capable of, including murder.

[19] Nor do I find *Ferdosi v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 1203 to assist the Applicants. In that case the RPD was found to have erred by making credibility and plausibility findings that were not tied to the ultimate issues to be determined in the claim. In this matter, the RPD consistently tied its evidentiary conclusions to the basis of the claim. For example, Mr. Diaz's conduct on Facebook, his attendance at the birthday celebration and the decision to send the minor Applicant to school at a time when the family claimed to be in fear of their lives, were factors highly relevant to the question of their credibility and subjective fear of persecution.

[20] In sum, I do not accept that the RPD conducted a microscopic examination of the evidence, misfocused on irrelevant factors, misstated the evidence or failed to consider the evidence in its totality.

[21] The Applicants also submit that the RPD erred by failing to accept their offered explanations. For example, they submit that Mr. Diaz provided a reasonable and plausible explanation for having posted on Facebook, being that he did not know that the photos could be viewed publically.

[22] In that regard, the RPD asked Mr. Diaz why he would "publically identify" the place to which he was travelling at the time he claimed to believe that he was in danger from the FARC. His first answer was that it was his sister and not he that had posted the information. Faced with the extracts from his own account, he then acknowledged that he had posted the information. He was then asked if he understood why it was a concern that he would "post publically"

information on Facebook showing where he could be found and the fact that his family was home alone without his protection. He answered that he did. When asked for an explanation he answered that when he posted photos on Facebook the more “likes” he received the more famous he felt. As to the danger, he was going on the birthday trip to tell his mother about the threats, preferring not to do so by telephone. At no point in that discussion did he indicate that he had not understood, until it was pointed out to him by the RPD, that the information posted on Facebook was public.

[23] It is also of note that at the commencement of the hearing the RPD advised counsel for the Applicants that social media research had been undertaken on publically accessible sites and provided a disclosure package of that material. The covering letter stated that the memo was prepared after researching publically accessible information. The RPD also identified that it had concerns with the Facebook posts and the timing of the Applicants’ allegations. Counsel was given time to review and discuss the documents with the Applicants prior to the commencement of the hearing.

[24] Having reviewed the transcript I am not persuaded that it supports the contention of Applicants’ counsel that Mr. Diaz misunderstood the RPD’s questions on this point and note that the Applicants did not file affidavit evidence in support of that contention. In my view, the RPD reasonably inferred that if Mr. Diaz had been under the belief that his posts were private then he would have stated this during the first hearing when the concern was raised by the RPD, and not later offered it up as an explanation at the second hearing date. The RPD explained this stating that Mr. Diaz was questioned extensively at the first sitting about why he posted the photos in a

public way that FARC could see. It addressed his explanation and concluded that if he did not realize that the photos were public at the time he posted them then he would have mentioned this at the first hearing. Further, that if he was travelling at a time of danger to him and his family he would have taken care to ensure that the photos were not public. In my view, the RPD reasonably drew a negative inference in these circumstances and did not err in declining to accept the Applicants' explanation. Nor did it err in declining to accept the Applicants' explanation that they did not realise, until questioned at the first hearing date, that it was dangerous to send the minor Applicant to school while they were in hiding and claimed to be in fear of their lives.

[25] As submitted by the Respondent, the RPD was not required to accept the Applicants' explanations and was entitled to weigh those explanations along with the other evidence before it (*Razzaq v Canada (Minister of Citizenship and Immigration)*, 2003 FC 864 at para 26; *Gulabzada v Canada (Citizenship and Immigration)*, 2014 FC 547 at para 9; *Houshan v Canada (Citizenship and Immigration)*, 2010 FC 650 at para 19). Further, it was open to the RPD to draw inferences from the evidence based on rationality and common sense (*Soorasingam v Canada (Citizenship and Immigration)*, 2016 FC 691 at para 23; *Avagyan v Canada (Citizenship and Immigration)*, 2014 FC 1003 at para 33; *Chowdhury v Canada (Citizenship and Immigration)*, 2014 FC 1210 at para 31).

[26] In my view the RPD's credibility findings were reasonable and the Applicants simply disagree with the weighing of the evidence. Accordingly, the Court will not interfere with the decision.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application for judicial review is dismissed.
2. There shall be no order as to costs.
3. No serious question of general importance was proposed for certification and none arises.

“Cecily Y. Strickland”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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