Federal Court  Cour fédérale

Date: 20170427

Docket: IMM-3848-16

Citation: 2017 FC 410

Ottawa, Ontario, April 27, 2017

PRESENT: The Honourable Mr. Justice Russell

BETWEEN:

DIDIER MAURICIO VALDEBLANQUEZ ORTIZ

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. INTRODUCTION

[1] This is an application under s 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*] for judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board of Canada [RAD], dated August 17, 2016 [Decision], which denied the Applicant's appeal from a negative decision of the Refugee Protection Division

[RPD], and concluded that the Applicant is neither a Convention refugee within the meaning of s 96 of the *IRPA* or a person in need of protection under s 97 of the *IRPA*.

II. BACKGROUND

[2] The Applicant is a citizen of Colombia who entered Canada on June 2, 2014 and claimed asylum on June 28, 2014 based on a fear of persecution from the Revolutionary Armed Force of Colombia [FARC] guerillas.

(1) Allegations

[3] The Applicant says that on August 9, 2010, he opened a pharmacy, Drogueria Humanitaria Cristo [DHC], at CRA 30 Sur No 52 25 in Bogota and employed his cousin. On October 6, 2012, the Applicant began receiving demands for large quantities of drugs from the FARC. Then, on October 15, 2012, he and his cousin were physically beaten by the FARC after refusing to provide drugs, which beatings they reported to the police.

[4] Following this incident, the Applicant decided to sell DHC. On November 12, 2012, he opened a new pharmacy, Drogueria Drocefan #2 [DD2], at Carrera 92, #129A 09, also in Bogota and about an hour and a half by car from DHC. However, threats from FARC persisted: the Applicant received threatening calls; DD2 was vandalized with pro-FARC graffiti in December 2012; and the Applicant was kidnapped and beaten on April 17, 2013, in an incident that required surgical treatment. The Applicant reported the kidnapping and assault to the police and

relocated to another area of Bogota, but the FARC contacted him again on May 26, 2013. The Applicant closed DD2 and moved to La Guajira, which was 19 hours away from Bogota.

[5] However, on July 22, 2013, the Applicant decided to return to Bogota to visit his common-law wife, Mayori Umana Rodriguez, and his cousin. During this visit, the Applicant's cousin was shot and killed. Five days later, the Applicant received a threatening note from the FARC.

[6] The Applicant left Bogota on August 1, 2013 to stay in Bucaramanga, which was 12 hours away from Bogota. He returned to Bogota on January 20, 2014 to apply for a United States [US] visa and stayed with a friend in Engativa. On May 17, 2014, he travelled to the US. He then entered Canada via an illegal border crossing on June 2, 2014.

(2) RPD Decision

[7] The Applicant and his wife's application for refugee protection was heard on October 24, 2014. The RPD rejected his claim on November 5, 2014, finding that the couple were not Convention refugees or persons in need of protection.

[8] The Applicant appealed the RPD decision to the RAD, claiming that the decision erred in regards to credibility findings.

III. DECISION UNDER REVIEW

[9] The Decision confirming the RPD decision and dismissing the Applicant's appeal was communicated by the RAD to the Applicant on August 17, 2016.

[10] The RAD began its analysis with a review of the role of the RAD, confirming that deference would be shown to the RPD's findings of credibility where the RPD was in an advantageous position to reach such conclusions, provided the RPD findings are the result of an intelligible reasoning process. The RAD also found that the applicable standard of review was correctness and that it would perform, in addition to a review of the RPD's decision, its own assessment of whether the Applicant was a Convention refugee or person in need of protection.

[11] The main issue was the RPD's finding that a document issued by the Bogota Chamber of Commerce [first BCC document] in relation to DHC was evidence that the Applicant owned the pharmacy on May 15, 2014, which conflicted with his testimony that he had sold DHC in November 2012 to escape the FARC. The RPD had not found his explanations regarding the inconsistency to be credible.

[12] The RAD found that the first BCC document was a business registration that clearly indicated DHC was registered in May 2014 and was owned by the Applicant, who was identified according to his unique national identity number. As a result, the RAD concurred with the RPD's finding that the document was evidence of the Applicant's ownership of DHC in May 2014, two years after he had testified he had divested himself of it.

[13] The RAD then considered a second document, also from the Bogota Chamber of Commerce [second BCC document], which was a business registration that indicated DHC was owned by someone other than the Applicant on September 12, 2014. However, the RAD found that this document did not demonstrate that the Applicant was not the owner in May 2014.

[14] Accordingly, the RAD found that the basis for the Applicant's refugee claim disappeared. The evidence demonstrated that he owned DHC in May 2014, contrary to his claims that he had sold it in November 2012 to escape the FARC's attempted extortion. Consequently, the RAD found the Applicant's claim of pursuit by the FARC was not credible.

[15] The RAD then addressed the RPD's credibility concerns over the Applicant's failure to provide corroborating documents to prove the existence of DD2. Based on the earlier finding that DHC had not been sold in 2012 and the lack of evidence supporting the existence of DD2, the RAD also found this aspect of the Applicant's claim not to be credible.

[16] Next, the RAD discussed the lack of evidence regarding the FARC's vandalism of DHC. The RAD did not find it reasonable that the Applicant would not have taken any photographs, for either police report or insurance purposes. As a result, the RAD also found that this aspect of the Applicant's claim was not credible.

[17] At the RPD hearing, the Applicant had testified that he had returned to Bogota despite threats from the FARC because he wanted badly to see his spouse and his cousin. In Bogota, he stayed with his parents-in-law and spouse. The RAD, in concurrence with the RPD, found that

his explanation was not credible, especially since the Applicant could have had his cousin and wife visit him rather than return to the area of the perceived threat.

[18] Consequently, after reviewing the audio recording of the RPD hearing and documents on file, the RAD concluded the RPD had not erred in its negative inferences concerning the Applicant's credibility, nor had the RPD ignored or misunderstood evidence in making its credibility findings. The RAD dismissed the appeal in accordance with s 111(1)(a) of the *IRPA*.

IV. ISSUES

[19] The Applicant submits that the following are at issue in this application:

1. Whether the RAD erred in upholding the RPD's negative credibility finding?
2. Whether the RAD erred in upholding the RPD's negative credibility findings without making any findings concerning the Applicant's corroborative documents?

V. STANDARD OF REVIEW

[20] The Supreme Court of Canada in *Dunsmuir v New Brunswick*, 2008 SCC 9 [*Dunsmuir*] held that a standard of review analysis need not be conducted in every instance. Instead, where the standard of review applicable to a particular question before the court is settled in a satisfactory manner by past jurisprudence, the reviewing court may adopt that standard of review. Only where this search proves fruitless, or where the relevant precedents appear to be inconsistent with new developments in the common law principles of judicial review, must the reviewing court undertake a consideration of the four factors comprising the standard of review

analysis: *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para 48.

[21] Decisions of the RAD in the context of the RPD's conclusions on credibility are reviewable under the standard of reasonableness: *Wahjudi v Canada (Citizenship and Immigration)*, 2017 FC 279 at para 6.

[22] When reviewing a decision on the standard of reasonableness, the analysis will be concerned with "the existence of justification, transparency and intelligibility within the decision-making process [and also with] whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law." See *Dunsmuir*, above, at para 47, and *Khosa v Canada (Citizenship and Immigration)*, 2009 SCC 12 at para 59. Put another way, the Court should intervene only if the Decision was unreasonable in the sense that it falls outside the "range of possible, acceptable outcomes which are defensible in respect of the facts and law."

VI. STATUTORY PROVISIONS

[23] The following provisions from the *IRPA* are relevant in this proceeding:

Convention refugee	**Définition de réfugié**
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	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

opinion,

social ou de ses opinions politiques:

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themself of the protection of each of those countries; or

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) 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.

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.

Person in need of protection

Personne à protéger

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

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) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;

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

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

(i) the person is unable or, because of that risk, unwilling to avail themself of the protection of that country,

(i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays,

(ii) the risk would be faced by the person in every part of that

(ii) elle y est exposée en tout lieu de ce pays alors que

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

[…]

Decision

111 (1) After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

confirm the determination of the Refugee Protection Division;

(b) set aside the determination and substitute a determination that, in its opinion, should have been made; or

(c) refer the matter to the Refugee Protection Division for re-determination, giving

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 qualité 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.

[…]

Décision

111 (1) La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

> the directions to the Refugee Protection Division that it considers appropriate.

VII. ARGUMENTS

A. Applicant

(1) Bogota Chamber of Commerce Documents

[24] The Applicant submits that the RAD made an error in fact in finding that the first BCC document "shows clearly" that the Applicant was still the owner of DHC on May 14, 2014. The BCC documents are neither ownership documents nor business licences; they are registrations with the BCC. The first BCC document was issued on May 15, 2014, when the Applicant was already in Canada, at the request of his wife. Upon transfer of a business, the new owner must change or update the Chamber of Commerce record. Following his wife's request of May 15, 2014, the Applicant's father approached the new owner and arranged to have the registration updated, a change which is reflected in the second BCC document. The Applicant and his wife explained that a BCC document does not reflect business ownership. However, the RAD misunderstood the purpose and significance of this evidence, thus rendering its conclusion concerning the ownership of DHC as of May 2014 unreasonable.

(2) Absence of Corroborative Evidence

[25] The Applicant also takes issue with the RAD's negative inference due to the lack of documents about DD2. The Applicant explained that documents were available for the DHC because the pharmacy was sold rather than closed; however, since DD2 was simply closed, there

were no documents available. The RAD ignored the Applicant's explanation and drew a negative inference instead.

[26] Additionally, the RAD drew a negative inference from the lack of photographs depicting the vandalism of DD2.

[27] The Applicant submits that the RAD's negative credibility findings based on a lack of corroborative documents concerning DD2 is unreasonable. A failure to produce supporting documentation cannot reflect adversely on an applicant's credibility in the absence of evidence that contradicts the applicant's testimony: *Attakora v Canada (Minister of Employment and Immigration) (FCA)*, [1989] FCJ No 444 [*Attakora*]; *Ahortor v Canada (Minister of Employment and Immigration) (FCA)*, [1993] FCJ No 705 [*Ahortor*].

(3) Return to Bogota

[28] The Applicant also argues that the RAD erred in drawing a negative inference about the Applicant's subjective fear based on his return to Bogota to see his wife and cousin. In an emotional testimony, the Applicant stated that he did not think of the consequences because it had been too long since he had seen his wife. A finding of implausibility based on external criteria such as rationality, common sense, and judicial knowledge, cannot stand: *Giron v Canada (Minister of Employment and Immigration)*, [1992] FCJ No 481 [*Giron*]. Thus, the RAD erred in basing a negative plausibility finding on the rationality of the Applicant's behaviour.

(4) Corroborative Documents

[29] The Applicant contends that the RAD erred in failing to discuss the Applicant's corroborative documents and in its concurrence with the RPD's findings on credibility. The corroborative documents include: medical reports consistent with the Applicant's evidence about the injuries he sustained; his cousin's death certificate; and reports filed with the police and attorney general. The Applicant's wife also submitted police and medical reports that corroborate the assault against her.

[30] The RPD did not give probative weight to the corroborative documents because it did not believe the testimony of the Applicant and his wife. There was no analysis or evidence that the documents are not genuine. The rejection of an official document, absent evidence tending to show its invalidity, is a serious error by the RPD that the RAD failed to deal with adequately: *Halili v Canada (Minister of Citizenship and Immigration)*, 2002 FCT 999 at para 6. Furthermore, in its own assessment, the RAD should not have rejected corroborative evidence based solely on a negative credibility finding: *Nkonka v Canada (Minister of Citizenship and Immigration)* (13 January 2016), Toronto IMM-2416-15 (FC) [*Nkonka*] at paras 7-8.

[31] The failure of the RAD to consider the psychological assessment of the Applicant's wife also constitutes an error. The RPD gave no weight to the assessment because the RPD did not believe the symptoms were caused as alleged because it did not find her credible. This was unreasonable. The psychologist's professional opinion was that consideration should be given to her symptoms, which included post-traumatic stress disorder, anxiety, and depressive symptoms,

as being the result of the significant trauma she had endured and her terror of returning to Columbia. This Court has found that passing references to medical reports is not adequate for the purpose of analysis, particularly where the report speaks to a refugee claimant's ability to testify and the tribunal subsequently makes adverse credibility findings: *Dink v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 334 at paras 28-30; *Rudaragi v Canada (Minister of Citizenship and Immigration)*, 2006 FC 911 at paras 6-7; *Min v Canada (Minister of Citizenship and Immigration)*, 2004 FC 1676 at paras 5-6, 9; *Villareal Zempoalte v Canada (Minister of Citizenship and Immigration)*, 2007 FC 263 at paras 16-17. The Court has also held that a tribunal is capricious if it rejects a professional opinion on the basis of a belief that the opinion is unsubstantiated and contrary to its own opinion of an applicant's mental state: *Tesema v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1417 [*Tesema*] at paras 3-6. Accordingly, the Applicant argues that the RAD's concurrence with the RPD's finding regarding the psychological assessment is an error.

(5) Cumulative Effect

[32] The Applicant submits that if the above errors do not constitute errors of law in themselves, then the cumulative effect amounts to an error in law: *Molina v Canada (Minister of Employment and Immigration)*, [1975] FCJ No 807.

B. Respondent

[33] The Respondent submits that the Decision is reasonable. The onus was on the Applicant to provide credible evidence to support his claims and it was open for the RAD to conclude that

his claim was not credible in light of the documentary evidence. The Decision is also reasonable given the lack of corroboration that should have been available to support the Applicant's claim.

(1) DHC Evidence

[34] The Respondent argues that it was reasonable for the RAD to confirm the RPD's finding that the first BCC document established the Applicant had not sold his pharmacy in 2012, but that he had renewed the registration of DHC on May 15, 2014 and was listed as the owner. This is a reasonable assessment, considering that the certificate states three things: DHC is a registered Chamber of Commerce member; membership was renewed on May 15, 2014; the Applicant is listed as the owner and referred to by his unique national citizen identity number.

[35] The Applicant's explanation that the first BCC document is not an ownership document and that the date is a date of request is without merit. The first BCC document clearly lists an "owner"; namely, the Applicant. There is nothing to establish that a new owner must update the registration. Additionally, the first BCC document states that May 15, 2014 was the date of "registration renewal" and not the date of request. Consequently, it was open to the RAD to conclude that the Applicant had not sold DHC in November 2012.

[36] With regards to the second BCC document, the Respondent argues that this evidence does not prove the Jose Miguel Jaramillo, the owner referred to in the document, owned DHC in November 2012. Rather, the second BCC document demonstrates that DHC was renewed under a new owner, Mr. Jaramillo. There is no error in this finding.

[37] The RAD concluded that the BCC documents contradicted the Applicant's claim that he did not own DHC in May 2014, having sold it in November 2012 to escape extortion by the FARC. This was a very material aspect of the Applicant's claim.

[38] Additionally, the Respondent says the RPD and RAD noted the BCC documents were registrations of DHC with the Chamber of Commerce, not operating licences. The registrations clearly indicate that DHC was owned by the Applicant in May 2014, contrary to his claim that he had sold it in November 2012. Based on this evidence, it was open for the RAD to find that the RPD did not err in finding that the evidence demonstrated the Applicant was the owner of DHC in May 2014. Given this finding, it was further reasonable for the RAD to find the Applicant was not credible and had not been threatened by the FARC.

(2) DD2 Evidence

[39] The Respondent contends that the RAD reasonably questioned the lack of corroborative documents to support the Applicant's ownership of DD2, given that such documents were available for DHC. It was reasonable for the RAD to expect some sort of documentation to establish DD2's existence, regardless of whether it had been closed or sold. Given the Applicant's failure to provide any evidence regarding DD2, it was reasonable for the RAD to determine that this aspect of his claim was not credible.

[40] The RAD also noted the Applicant's failure to provide any photographs of the graffiti on DD2 to support his allegation that the FARC pursued him. It was reasonable for the RAD to expect that the Applicant, an education businessman, would require photographs of the

vandalism for police reports and insurance purposes. The complete lack of evidence regarding DD2 forms a reasonable basis for the RAD to concur with the RPD that the Applicant's claim was not credible in this respect.

[41] This Court has held that the practice of seeking corroborating evidence is a manner of common sense: *Ortiz Juarez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 288 at para 7; *Sinkili v Canada (Minister of Citizenship and Immigration)*, 2015 FC 1413 at para 11. It has also been decided that it is reasonable for a decision-maker to demand corroborating evidence where an applicant can reasonably be expected to have such evidence available: *Wokwera v Canada (Minister of Citizenship and Immigration)*, 2012 FC 132; *Haji v Canada (Minister of Citizenship and Immigration)*, 2009 FC 889. Given that the Applicant was found completely lacking in credibility and that it was reasonably expected him to have corroborating evidence available; it was not unreasonable for the RAD to demand such evidence or to draw a negative inference from its absence. As a result, it was open for the RAD to confirm the RPD's decision in this respect.

(3) Return to Bogota

[42] The Respondent also argues that the evidence regarding the Applicant's return to Bogota in the face of alleged persecution was not credible. The RAD's rejection of the Applicant's explanation as to why his cousin and spouse could not visit him, which was that his wife was working, was reasonable. The Applicant had testified that he returned to the very neighborhood he had fled to see his cousin, despite fear for his life. The Respondent submits that the RAD was entitled to find that this was not plausible. The RAD is entitled to make findings based on lack of

plausibility, common sense, and rationality and may reject evidence if it is inconsistent with the probabilities affecting the case as a whole: *Zhai v Canada (Minister of Citizenship and Immigration)*, 2012 FC 452 at para 14.

(4) Consideration of Other Evidence

[43] The Respondent contends that the RAD considered all of the evidence, including: the audio recordings of the hearings; evidence disclosed; and the RPD's findings, reasons, and decision. The RAD's basis for concurring with the RPD was that: the Applicant did not sell DHC in 2012 and remained the owner until at least May 2014; the Applicant did not open DD2; and the FARC did not vandalize DD2. Based on these findings, the RAD then made credibility findings: the Applicant's claim that he was pursued by the FARC was not credible; the Applicant's claim that he was forced to sell and open a new pharmacy in response to threats by the FARC was not credible; the Applicant's claim that the FARC continued to pursue him by vandalizing DD2 was not credible; and the Applicant's claim that he returned to Bogota despite pursuit from the FARC when he could have had his spouse and cousin visit him was not credible.

[44] In summary, the RAD confirmed the RPD's finding that the Applicant was not credible and was not pursued by the FARC, with the finding being reasonable and determinative of the Applicant's claim. The other documents were peripheral to the determinative issue, which was whether the FARC were in pursuit of the Applicant. Given that the Applicant was not credible, it was reasonable for the RAD to concur with the RPD that he was also not targeted by the FARC. The RAD therefore reasonably reviewed the evidence to the extent necessary to deal with the

Applicant's arguments while according deference to the RPD's findings of fact on the Applicant's *viva voce* testimony. Consequently, there is no error.

VIII. ANALYSIS

A. The Pharmacy Documents

[45] The Applicant argues that the RAD erred in finding that the first BCC document "clearly shows that the Applicant was still the owner of DHC as of May 15, 2014" because the "RAD misunderstands the purpose and significance of the document, and its conclusion concerning the ownership of the pharmacy is unreasonable."

[46] The RAD addresses the pharmacy documents as follows:

> [22] The credibility issues identified by the RPD included the issue over the sale of the original pharmacy which the Appellant testified that he sold in November of 2012. The Appellant provided a document which was translated into English by a professional translator. The panel had the Board qualified interpreter translate the document as well, at the hearing, to confirm a particular "phrase". This document was a business registration with the Bogota Chamber of Commerce (membership in the Chamber). As I have stated previously, I concur that this document is not a license to operate a business but it is a registration of that business with the Chamber of Commerce and that registration does clearly indicate that the business being registered in May 2014 (two years after the Appellant testified that he sold it) is owned by the Appellant and includes the Appellant's national identity number (which is unique to this Appellant). Therefore, I concur with the RPD that this document clearly shows that the Appellant was the owner of the pharmacy in May 2014, two years later than he had testified to having divested himself of it.
>
> [23] Counsel disclosed a new Chamber of Commerce document, dated September 12, 2014, showing the owner of the same pharmacy to be someone other than the Appellant. Contrary to counsel's assertions, all this document proves is that as of

> September 12, 2014, the pharmacy was no longer owned by the Appellant. However, this second document in no way suggests that the pharmacy was not still owned by the Appellant in May of 2014, which is inconsistent with the Appellant's narrative and testimony.
>
> [24] The sale of the first pharmacy is material to the claim as it would tend to support the allegation of the FARC extortion for drugs if the Appellant had sold the pharmacy in 2012. A bill of sale, for example would indicate when the business was sold and to whom. As the Appellant's own documentary evidence tells me clearly that the Appellant still owned this pharmacy until sometime after May 15, 2014, the entire basis of his claim (which rests on the FARC pursuing him after his refusal to sell them drugs) disappears. Based on the Appellant's own evidence, I am left to conclude that he retained ownership of his first pharmacy until after May 15, 2014. Consequently, I find that the Appellant's story of being pursued by the FARC is not credible.

[47] The evidence relevant to this issue is complex. Clearly, the RAD does not misunderstand the purpose and significance of the Chamber of Commerce documentation. The documents are not ownership documents *per se*, such as transfer or title deeds, but they do "indicate" that the Applicant claims ownership of DHC as of particular dates. In fact, this documentation was the only documentary evidence provided by the Applicant to support ownership of DHC. If this documentation is viewed in isolation, it would not be unreasonable for the RAD to conclude that, based upon this documentation, and in the absence of other ownership documents, the Applicant had claimed ownership of DHC as of May 2014, some two years after he testified that he sold it.

[48] The Applicant, through his wife, provided an explanation that a new owner has to change and update the name with the Chamber of Commerce and this can take some time.

[49] The Applicant knew about the documentation problem because of the RPD decision. Yet he made no effort to provide other documentation before the RAD to establish a change of ownership in 2012.

[50] In addition, the Applicant produced no documentation at all to establish that he had bought a second pharmacy so that, given that the only documentation he produced "indicated" he still owned the first pharmacy in May 2014, his whole narrative about selling one pharmacy in 2012 and then moving away and purchasing another pharmacy appeared to be contradicted by the documentation he produced.

[51] On the other hand, it seems to me that there are other factors that the RAD fails to take into account.

[52] The Applicant applied for a US visa on January 20, 2014, which suggests he had decided to leave Colombia by January 20, 2014 and followed through on May 17, 2014 when he did leave. In my view, it is unlikely that a person who intends to leave the country permanently would renew his business registration a mere two days before his permanent exit. This renders plausible his explanation that the date on the document is actually a date of request – especially if requesting a copy requires simultaneous renewal or automatically renews the registration (though this has not been suggested by the Applicant). It was reasonable for the Applicant to gather all his documents before permanently exiting, which is supported by a request for a copy of the registration two days prior to his departure.

[53] The subsequent change on the second BCC document is also consistent with the Applicant's testimony that he had his father ask Mr. Jaramillo to update the ownership on the registration. However, according to the RPD's narrative, the Applicant renewed his business, then left Colombia immediately, and sold the business in his absence. In my view, it is unlikely that a person would renew his business only to leave immediately for several months and then sell it. The Applicant's explanation is reasonable in this respect.

[54] With regards to the lack of documentation for DD2, the Applicant's explanation also is not unreasonable. The Applicant closed DD2 on May 26, 2013 and moved 19 hours away from Bogota shortly afterwards. It is logical, then, that registration documents for a business that has been inoperative for a year (assuming that the Applicant attempted to request the registrations for DHC and DD2 on the same date of May 15, 2014) would be unavailable. This is in contrast to DHC, which continued to operate.

[55] In my view, the Applicant's explanations did have a reasonable basis even if there was more he could have done in terms of producing additional documentation. However, the Court does not need to decide whether the RAD's failure to consider these other aspects of situation amount to a reviewable error because, as I explain below, the matter must be returned for reconsideration because of the RAD's failure to deal appropriately with the Applicant's other corroborative documents.

B. Negative Inferences

[56] The Applicant also says that the RAD's finding in paragraph 26 of the Decision gives rise to a reviewable error:

> [26] The Appellant also could have provided photographs of the FARC graffiti that was allegedly put on his store front, but did not. It is not reasonable that an educated businessman, who has had his storefront vandalized, would not have taken photos of the vandalism for his records, for the police or for the insurance. With no photographic evidence and considering all of the other credibility concerns above, I find that this aspect of the Appellant's story is not credible.

[57] The Applicant alleges that the RAD is here being speculative, and is relying upon an absence of evidence to contradict the Applicant's testimony. He says that no negative inference should have been drawn from his failure to provide a photograph. He relies upon *Attakora* and *Ahortor*, both above.

[58] Paragraph 26 has to be read in the context of the whole Decision. The RPD points out that the Applicant provided no documents to support his assertion that he sold DHC in 2012 as alleged. In fact, he produced a document which indicated that he still owned DHC in May 2014. The RPD also pointed out that the Applicant "had failed to provide any sort of corroborating documents in regards to the second pharmacy he claims to have opened after closing the first."

[59] The RAD suggests documentation that the Applicant could have produced to support his narrative that the FARC were pursuing him. One of the suggestions is a photograph of the alleged FARC graffiti. The basis of the negative credibility finding is not a negative inference

from his failure to provide a photograph of the graffiti. The basis is his failure to provide *any* documentation to support his claim that he sold DHC in 2012, so that he could get away from the FARC. The RAD is simply pointing out that, as an educated businessman, it could not have been difficult for the Applicant to provide some documentation to support his central narrative about selling DHC. Having made a negative credibility finding based upon the Chamber of Commerce documents, the RAD was entitled to seek corroborative documentation to support the Applicant's oral evidence because the presumption of truthfulness no longer applied. See *Magyar v Canada (Minister of Citizenship and Immigration)*, 2015 FC 750 at para 36; *Dundar v Canada (Minister of Citizenship and Immigration)*, 2007 FC 1026 at paras 21-22.

C. Return to Bogota

[60] The Applicant says that the RAD also erred by making a negative credibility finding based upon some notion of what would be rational in the circumstances. He relies upon *Giron*, above:

> 1 The Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") chose to base its finding of lack of credibility here for the most part, not on internal contradictions, inconsistencies, and evasions, which is the heartland of the discretion of triers of fact, but rather on the implausibility of the claimant's account in the light of extrinsic criteria such as rationality, common sense, and judicial knowledge, all of which involve the drawing of inferences, which triers of fact are in little, if any, better position than others to draw.

[61] The RAD addresses this issue as follows:

> [27] The RPD questioned the Appellant on the issue of why, if the Appellant believed his life was threatened, would he return to the place where those threats had occurred. The Appellant had, after allegedly selling his pharmacy and relocating, returned to the

> area to visit his cousin and his common-law partner. The Appellant testified that he wanted badly to see his spouse and his cousin. When questioned as to why he would not have his spouse come to visit him in his safe location, the Appellant testified that his wife was working and he wanted to see his cousin. The Appellant testified that he stayed with his wife at her parent's house and the next day, he met his cousin in the neighbourhood where his "first" pharmacy was located. The Appellant testified that he just wants to see his wife and that he was no thinking of the consequences of doing that. This is not credible. The Appellant alleged that he fled Bogota in fear for his life yet he returned to the actual neighbourhood from which he fled just to see his cousin. The Appellant spent at least one night in his in-laws home with his spouse, in Bogota as well. The Appellant could have had his spouse and cousin come to visit him, yet instead returned to Bogota where the FARC, according to the Appellant, was looking for him to do him harm. I concur with the RPD that this story is not at all credible.

[62] The RAD found that the Applicant's story was inconsistent because he would not have returned to the very neighbourhood where his life was in danger if that danger really existed, and when there were other ways that he could see his wife. This is akin to the commonly used finding that re-availment is inconsistent with subjective fear. See *Kostrzewa v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1449 at para 26. I don't think this is merely "some notion of what would be rational in the circumstances." It is a reasonable assessment of evidence that suggests no subjective fear.

D. Failure to Consider Other Corroborative Documents

[63] The Applicant says that the RAD failed to consider the other corroborative documents he provided in the assessment of his credibility:

> 21. The RAD finds that the RPD's findings on credibility are a product based on and supported by the evidence that was before it,

> and the RAD concurs with those findings. The RAD does not discuss the Applicant's corroborative documents.
>
> 22. The RPD did not give any probative weight to the Applicant's corroborative documents simply because it did not believe the evidence of the Applicant and his spouse. This was a serious error by the RPD, and the RAD failed to deal with it adequately.
>
> 23. The Applicant submitted medical reports consistent with his evidence about the injuries he sustained, a death certificate concerning his cousin, and reports he filed at the police and the office of the Attorney General. His wife submitted police and medical reports corroborating the assault she suffered.
>
> 24. It was not open to the RPD to give no probative weight to official documents without any analysis or evidence that the documents are not genuine. It constitutes a reviewable error for the Board to reject an official document absent evidence tending to show its invalidity. The RPD erred, and the RAD erred in upholding its finding.
>
> 25. In *Nkonka*, the Federal Court confirmed that the Board should not reject corroborative evidence based solely on a negative credibility finding. The Court found that,
>
> > "If anything, there is more of an onus on the Board to properly assess the evidence when having found credibility issues, since a refugee claimant's testimony is presumed to be true, unless there is a valid reason to doubt its truthfulness."
>
> The Court cited the *Chen* and *Paplekaj* cases and noted that, "This Court has been clear that corroborating evidence cannot be rejected simply on the basis that an Applicant is not believed".
>
> 26. The RAD erred in failing to consider the Applicant's corroborative documents in its credibility assessment.
>
> [footnotes omitted]

[64] The Applicant complains that the RAD made no independent assessment of this corroborative documentation, or of the way the RPD had dealt with the same documentation. He points to paragraph 33 of the RAD Decision:

> I find that the RPD's findings on credibility are a product based on and supported by the evidence that was before it and I concur with those findings.

[65] The RPD had dealt with this documentation as follows:

> [39] Since the Tribunal does not believe that the principal claimant or the claimant, it does not give any probative weight to the following documents: Surgical report of principal claimant C-10; the two progress sheets and to the document entitled Epicrisis, C-11 and C-12; death certificate of his cousin, C-15; the police report dated October 5th 2012, C-16; the police report dated April 7th 2013, C-17; and the report made to the Attorney General's office on July 29th 2013 provided as C-18; C-23 and C-24; two medical reports; C-25 and C-26, two police reports; C-27, Report of the national Institute of Legal medicine and forensic sciences.

[66] In support of his position, the Applicant refers to *Nkonka*, above:

> [7] I agree with the Applicant that the Board's failure to assess the two key pieces of corroborative evidence cited above, based solely on the Applicant's negative credibility finding, was unreasonable. If anything, there is more of an onus on the Board to properly assess the evidence when having found credibility issues, since a refugee claimant's testimony is presumed to be true, unless there is valid reason to doubt its truthfulness, (*Maldonado v. Canada (Minister of Employment and Immigration)*, [1980] 2 F.C. 302 (C.A.). (I acknowledge that the Board also found that the Applicant could not properly explain what the charges meant in the arrest warrant, but it is hardly reasonable to expect the Applicant to interpret the meaning of these charges.)
>
> [8] This Court has been clear that corroborating evidence cannot be rejected simply on the basis that an Applicant is not believed. As Mr. Justice Rennie said in *Chen v. Canada (MCI)*, 2013 FC 311, at paras 18-21 in a similar situation, also dealing with arrest warrants, "the reasoning has been inverted". And Justice Zinn explained the legal proposition thus in *Paplekaj v. Canada (MCI)*, 2012 FC 947:
>
> > [15] The decision of the Court in *RER* does not, as was submitted, stand for the proposition that the Board cannot make a general credibility finding

> prior to examining all of the evidence. The ratio of that decision is found in paragraph 10 wherein Justice Campbell writes that the error is in rejecting independent evidence simply on the basis that the applicant is not believed:
>
> I find that the RPD was in error by rejecting evidence which comes from sources other than the testimony of the principal Applicant simply on the basis that the principal Applicant is not believed. In my opinion, each independent source of evidence requires independent evaluation. This is so because the independent sources might act to substantiate an Applicant's position on a given issue, even if his or her own evidence is not accepted with respect to that issue.

[67] The Respondent says that the documentation at issue here was peripheral to the issue at hand because it did not establish that the FARC was, in fact, pursuing him, which was the whole basis of his claim and that had been disproved by the pharmacy evidence. I do not think this documentation was peripheral.

[68] I think it is clear that both the RPD and RAD fail to address evidence "from sources other than the testimony of the [Applicant]" because they do not believe the Applicant on the basis of the pharmacy documentation and his return to the scene of the FARC threats. This is precisely what the jurisprudence says they should not do. This independent evidence should have been assessed to see if it could offset the earlier negative credibility finding. This does not mean that it would necessarily have changed the RAD's mind on the central issue; but the RAD had to assess it as independent source evidence and explain why it was not sufficient to support the Applicant's case. It could not simply be rejected because the RPD - endorsed by the RAD - had made an earlier finding that it did not believe the Applicant's claims based upon other evidence, or lack thereof. On this ground alone, I think the matter has to be returned for reconsideration.

E. Psychological Report

[69] The Applicant says that the psychological assessment of the Applicant's wife was an uncontradicted opinion from a profession and that symptoms suffered by the Applicant's wife were consistent with the narrative of what she had suffered, and that the RAD erred by failing to consider the assessment and in simply upholding the RPD finding. The Applicant relies on *Tesema*, above:

> [5] The issue for determination is whether, in rejecting the opinion, the RPD committed a reviewable error. In *Gina Curry v. Minister of Citizenship and Immigration*, IMM-10078-04, dated December 21, 2005, Justice Gauthier clearly delineates an immigration officer's discretion in assessing psychiatric or psychological evidence:
>
> > As it has been mentioned on numerous occasions by this Court, immigration officers are not experts in psychology or psychiatry. They cannot simply discard experts' opinions without giving at least one reason that stands to probing examination.
>
> Applying this opinion to the present case, I agree with Counsel for the Applicant's argument that the refusal to accept the psychological opinion does not meet the standard expressed.
>
> [6] In my opinion, the RPD's statement does not provide any legitimate reason for not accepting the professional opinion. Expressed in the words used is the RPD's belief that the opinion is unsubstantiated, and contrary to its own opinion of the Applicant's mental state. I find that it was not open to the RPD to reject a professional opinion on this basis, and to do so, constitutes the making of a capricious finding. As a result, the RPD's decision was rendered in reviewable error.

[70] In the present case, the RPD's treatment of the report is as follows:

> [40] As for the psychological report presented on behalf of the claimant. It concludes that the claimant suffers from Post-Traumatic Stress Disorder with marked anxiety and severe

> depression. Though the Tribunal does not dispute this finding, since it has no expertise in this field, it does however not believe that these symptoms were caused by the allegations of the claimant as it does not find her credible.

[71] As this makes clear, the RPD does not reject the medical opinion found in the report. The Applicant says that, once again, the RPD – endorsed by the RAD – simply rejects the corroborative value of the wife's symptoms because it has already decided not to believe her. In my view, however, the cause of the wife's symptoms as set out in the report cannot, unlike the other corroborative evidence, be attributed to a truly independent source so that they do not require an independent evaluation if the RPD and the RAD have concluded that the wife cannot be believed.

[72] A psychologist's report is primarily based on a patient's account of events and symptoms. If the patient is not credible, then the credibility of the report and its findings are also in doubt. Accordingly, it is open to the decision-maker to assign less weight to the report. Justice Strickland considered the same issue in *Irivbogbe v Canada (Minister of Citizenship and Immigration)*, 2016 FC 710 at para 36:

> As to the psychologist's report, which post-dates the Applicant's claim for refugee protection, the RAD found that because it was based on self-reporting by the Applicant and because the RPD had found the Applicant not to be credible, it was open to the RPD to give it little weight and, based on its own assessment of the evidence, the RAD agreed with the RPD's finding. Thus, contrary to the Applicant's submissions, the report was not ignored. It is also of note that the RAD does not take issue with the diagnosis that the Applicant suffers from a major depressive disorder, moderate, single episode, high anxiety and has had a panic attack. Nor has the Applicant alleged that the RAD erred in failing to consider the impact of the diagnosis should he be returned to Nigeria. Rather, because of the lack of credibility and regardless of the diagnosis, the report does not assist the Applicant in

> establishing his sexual identity as a bisexual, which is what the RPD found and which finding was adopted by the RAD. I see no error in this finding as the recounting of events to a psychologist does not make the events themselves more credible (*Rokni v Canada (Citizenship and Immigration)*, [1995] F.C.J. No. 182 at para 16; *Danailov v Canada (Employment and Immigration)*, [1993] F.C.J. No. 1019 at para 2; *Egbesola v Canada (Citizenship and Immigration)*, 2016 FC 204 at para 12; *Moya v Canada (Citizenship and Immigration)*, 2016 FC 315 at para 57).
>
> (emphasis added)

[73] In the present case, the RAD has not ignored the psychological report. The RAD has assessed the corroborative value of the report, which it found to be little. And, based on the jurisprudence, it was reasonable for the RAD to do so.

F. Conclusions

[74] Given my assessment of the RAD's treatment of the corroborative evidence as set out above, I think this Decision is rendered unreasonable and should be returned for reconsideration.

IX. Certification

[75] The parties agree there is no question for certification and the Court concurs.

JUDGMENT

THIS COURT'S JUDGMENT is that

1. The application is allowed. The Decision is quashed and the matter is returned for reconsideration by a differently constituted RAD.
2. There is no question for certification.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

Richard M. Addinall	FOR THE APPLICANT
Tessa Cheer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard M. Addinall Barrister and Solicitor Toronto, Ontario	FOR THE APPLICANT
William F. Pentney Deputy Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT