Federal Court Cour fédérale

Date: 20210128

Docket: IMM-7358-19

Citation: 2021 FC 97

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 28, 2021

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

ANA BEATRIZ SANTOS DE PACAS
JOSE ROBERTO PACAS PEREZ
DIEGO ANDRES PACAS DE SANTOS

Applicants

and

THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] This is an application for judicial review of a decision dated November 13, 2019, of the Refugee Appeal Division (RAD) of the Immigration and Refugee Board, in which the RAD confirmed the rejection of the applicants' refugee protection claim as they are neither

Convention refugees nor persons in need of protection under the *Immigration and Refugee Protection Act*, SC 2001, c 27, sections 96-97(1) [IRPA or the Act].

[2] The principal applicant, her husband and her minor son are citizens of El Salvador and claim refugee status for fear of the criminal group Mara 18. The applicants arrived in Canada in 2017 via the United States.

[3] The Refugee Protection Division (RPD) rejected the applicants' claim on the basis that the alleged fear was not one of the five grounds set out in the definition of a refugee and that they lacked credibility. This was confirmed by the RAD.

[4] This judicial review focuses on the RAD's conclusions with respect to the application of sections 96 and 97 of the IRPA, the factual and implausibility findings, and the observance of the principles of natural justice and procedural fairness. Except in respect of the last issue, the applicable standard of review by this Court is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23, 77 [*Vavilov*]).

[5] The applicants submit, in sum, that their account, their evidence attesting to the violent death of the father of the principal applicant and the documentary evidence in the National Documentation Package corroborate a subjective fear of persecution for reasons of criminality under section 97 of the IRPA, as well as an objective fear for reasons of membership in a particular social group, the family, or imputed political opinion under section 96 of the Act.

[6] They also point out that the errors of fact—country of departure, year of death of the father and provision of the threating note in the complaint to the police—and the implausibility findings—or almost all of the credibility analysis by the RAD—taint the reasonableness of the RAD's decision.

[7] The applicants inserted into their argument the inadmissibility of new evidence on appeal—an article titled "How an innocent man wound up dead in El Salvador's justice system" from the 2017 Washington Post; a document from *La Prensa Gràfica* titled [TRANSLATION] "Forensic Medicine Institute lacks forensic science with academic specialization" from 2018; and an extract from the report "El Salvador and Human Rights - The challenge of reform" from American Watch, 1991.

[8] First of all, credibility findings can affect all of the relevant evidence, including documentary evidence, causing the rejection of the claim. It is not sufficient to identify different conclusions based on the evidence in order to intervene; rather, the onus is on the claimant to demonstrate that the findings in a decision are perverse, capricious or based on a misapprehension of the evidence (*Zhu v Canada (Citizenship and Immigration)*, 2013 FC 1139 at paras 47, 49).

[9] The RAD concluded in this case that the entire claim was lacking since the central allegations were not credible. It noted, in particular, inconsistencies in the applicants' account and their documentary evidence as to the circumstances surrounding the alleged murder of the father, the incidents which followed, the behaviour of the applicants—for example, the return to

El Salvador three times—and the content of the complaints following the alleged theft and a threating note.

[10] The premise of the applicants' argument is that the evidence was allegedly unduly devalued because of the applicants' lack of credibility, whereas all the evidence matches the applicants' account and allows their credibility to be assessed. The applicants thus proceeded to present each piece of evidence, including the evidence on appeal that was rejected by the RAD, in order to identify an alternative conclusion on the application of sections 96 and 97 of the IRPA. This exercise was repeated to support their position that the RAD had allegedly drawn findings of implausibility in almost all of its analysis of their credibility.

[11] This circular argument hardly meets the burden required by case law in order to intervene in a finding of credibility which leads to the rejection of a refugee protection claim. Moreover, the RAD is presumed to have considered the whole file. Unless there are exceptional circumstances, this Court must not interfere with these factual findings; as well as refrain from reweighing and reassessing the evidence (*Vavilov*, above, at paras 125, 128).

[12] The Court is ultimately asked to reweigh all the evidence, including evidence on appeal that was rejected by the RAD, which it cannot do at this stage.

[13] As for the evidence on appeal which was deemed inadmissible, it should be recalled that the RAD found in its analysis that the applicants had not demonstrated why this evidence was relevant and why it would not normally have been submitted before the RPD; the question of

credibility being relevant from the outset and expressly underlined by the RPD at the start of the hearing. Nor did the applicants establish in this Court how the evidence on appeal should have been admitted under the strict criteria of the IRPA, subsection 110(4), and the criteria set out in the case law (*Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96).

[14] Moreover, they did not demonstrate how the failure to refer to or address a specific piece of evidence—the affidavit concerning El Salvador's forensic medicine procedures, which was submitted after the perfection of the appeal,—is determinative or addresses the credibility flaws raised, and amounts to the RAD not having regard to the material before it (see *Basanti v Canada (Citizenship and Immigration)*, 2019 FC 1068 at para 24).

[15] For the reasons given above, the RAD's decision is reasonable. The errors of fact raised by the applicants, which appear rather clerical in this case, are not sufficient to overturn this conclusion (*Law Society of New Brunswick v Ryan*, 2003 SCC 20 at para 56; see also *Mobil Oil Canada Ltd. v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202 at p 228).

[16] This Court must therefore consider whether the RAD observed the principles of natural justice and procedural fairness.

[17] In this regard, the applicants argue that the RAD had to grant them the right to a hearing and, under section 24 of the *Refugee Appeal Division Rules*, SOR/2012-257, notify them of the use of specialized knowledge before excluding the evidence, to give them the opportunity to defend themselves.

[18] However, for the first point, for lack of new documentary evidence, subsections 110(3) and (6) of the IRPA provide that the RAD must proceed without holding a new hearing. The evidence on appeal in this case was not admitted and, therefore, there was no right to a hearing.

[19] As for the second point, it does not appear from a reading of the decision that the RAD used any specialized knowledge in its analysis, forcing it to give the applicants the opportunity to submit additional observations. The RAD did, however, acknowledge this failure on the part of the RPD regarding the causes of death, but found that it was not determinative since the evidence did not demonstrate the central allegation—namely the circumstances surrounding the death of the principal applicant's father. The issue of specialized knowledge does not emerge elsewhere in the decision, and the applicants do not identify a specific case; on the contrary, they generally point out all the places where their evidence should have been assessed in support of their case. This does not amount to a breach of a principle of natural justice.

[20] In the absence of a breach of the principles of natural justice and procedural fairness, and with the decision of the RAD having been found reasonable, the application for judicial review is dismissed.

JUDGMENT in IMM-7358-19

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed. There is no question of general importance to certify.

Obiter

This Court wishes to reiterate the instructions of the Supreme Court of Canada to the effect that a judicial review is not the time to embark on a line-by-line treasure hunt for error (*Vavilov*, above, at paras 102, 284–85).

"Michel M.J. Shore"

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7358-19
STYLE OF CAUSE:	ANA BEATRIZ SANTOS DE PACAS, JOSE ROBERTO PACAS PEREZ, DIEGO ANDRES PACAS DE SANTOS v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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