Cour fédérale Federal Court

Date: 20210413

Docket: IMM-5396-19

Citation: 2021 FC 320

Toronto, Ontario, April 13, 2021

PRESENT: Mr. Justice Andrew D. Little

BETWEEN:

LIBIA YOLANDA MORA AGUDO
ALBERTO ALEJANDRO RIVERO MORA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicants, Ms. Libia Yolanda Mora Agudo and her 13-year-old son Alberto Alejandro Rivero Mora, are Venezuelan nationals. Ms. Mora Agudo claimed Convention refugee status and status as a person in need of protection under s. 96 and subs. 97(1) of the *Immigration and Refugee Protection Act*, S.C. 2001, c 27 (the "IRPA") for herself and her son on the basis of her political beliefs.

[2] In a decision dated August 12, 2019, the Refugee Protection Division ("RPD") concluded that the applicants are not Convention refugees and not persons in need of protection. On this application, they ask the Court to set aside the RPD's decision.

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

I. **Background and Events Leading to this Application**

[4] Ms Mora Agudo is the principal applicant and in these reasons, I will refer to her simply as the "applicant" as it is her experiences and political opinions that form the basis of the two applicants' claims under the *IRPA*.

[5] The applicant worked as a civil servant in the Secretariat of Citizen Security of the regional government of Carabobo in Venezuela for 22 years, from the mid-1990s until 2018. She supported the *Proyecto Venezuela* (Project Venezuela) party but was not politically active.

[6] In 2012, the *Partido Socialisto Unido de Venezuela* (United Socialist Party of Venezuela) (the "PSUV"), the party of Presidents Hugo Chavez and Nicolás Maduro, came to power both regionally and nationally. The applicant began attending rallies against the PSUV.

[7] In November 2016, a new Secretary of the Secretariat of Citizen Security was appointed. That individual was an avid supporter of the PSUV and pressured employees under his supervision to support the PSUV, for example by attending pro-PSUV rallies. The applicant refused to express her support for PSUV and came under scrutiny at work. She was directed to

perform tasks that were not within her job description as an administrator, such as visiting local jails where political prisoners were detained. The applicant claims she witnessed human rights violations taking place against the detainees in the jails.

[8] In March 2017, the applicant felt sufficient pressure that she registered for a ‘homeland card’ issued by the PSUV government, although she did not join the PSUV officially. Her superiors told the applicant and other employees that refusing to obtain the card would be viewed as unpatriotic (i.e., not supportive of the government). The applicant believed that if she did not obtain the card, she would be denied health services, salary increases, promotions and leave.

[9] By July 2017, the applicant’s superiors had made it clear that any employees’ refusal to support the PSUV actively could adversely affect their entitlements to various employment benefits, such as paid leave and pensions. Her workplace became increasingly negative, with her superiors making clear that those working against the regime should not work in government. The applicant had to make excuses as to why she could not attend pro-government rallies.

[10] In July 2017, the applicant attended a symbolic referendum (C*onsulta Ciudadana*) hosted by the opposition. After the referendum, she was followed home by two individuals whom she suspected were government security personnel. She believes the same individuals also followed her to work the next morning. She therefore believed she was under surveillance by the government and filed a police report.

[11] In August 2017, the applicant's young son received three calls on his mobile phone from an unknown adult. During the first call, the applicant told her son to hang up. The second time, the caller told her son that his mother "should be careful to avoid getting involved in things that are not her business and not to become a snitch". In the third call, she got on the phone and told the caller not to call back. No further calls occurred. She testified that the three calls scared her enough that she became motivated to quit her job on October 30, 2017.

[12] On November 20, 2017, Ms Mora Agudo and her son flew to Miami and made their way to Canada, where they claimed protection under the *IRPA*. The applicant has a niece in Canada, so they were exempt from the Safe Third Country Agreement between Canada and the United States.

[13] The applicant believes that if she returns to Venezuela, she and her son would be in danger because of her political opinion and opposition to the PSUV government and because she is a former civil servant.

The RPD Decision

[14] The RPD Member concluded that neither applicant was a Convention refugee or a person in need of protection under s. 96 and subs. 97(1) of the *IRPA*. The RPD Member accepted the applicant's testimony as truthful. However, he was unable to find that "the problems that the [applicant] encountered in her home country amounted to persecution" under s. 96 on the basis of political opinion or belief. The Member also rejected the applicant's subs. 97(1) claim on the basis that she would not personally face a danger on substantial grounds of torture, or of a risk to

her life or her son's life, or of cruel and unusual treatment or punishment. The Member's analysis focused on the s. 96 claim of Convention refugee status, given that the subs. 97(1) analysis has a higher standard of proof.

[15] The RPD Member held:

- The changes to her duties at work and being "chided for being late for work" were regrettable but "certainly [did] not amount to persecution";
- While feeling she was forced to join the PSUV and being pressured to attend partisan government rallies was "certainly not good", in his view these issues did "not engage her core human rights". The applicant refused to attend these rallies and, in the view of the Member, was "no worse off for having done so";
- The phone calls to the applicant's son's phone did not contain overt death threats, as the applicant alleged. Because no further calls occurred in the three months before the applicants left Venezuela, the RPD Member characterized them as an intimidation tactic; and
- It was difficult to see how the applicants would be at "any particular or special risk of harm" if they returned to Venezuela.

[16] The RPD Member considered the current country conditions in Venezuela. He observed that the existence of mass demonstrations in the streets against the regime of Nicolás Maduro suggested that "it is possible to oppose the regime in Venezuela" without risk of persecution.

[17] Finally, the RPD Member disagreed with the applicant's submission that she would face danger upon return to Venezuela because she is a former civil servant. The Member found nothing in the country condition documentation to support the claim that she would be in jeopardy as a former civil servant or "have a problem from her former government employer". The RPD Member observed that "in the circumstances of this case", although Venezuela was "spiraling downward into chaos under an increasingly obdurate and oppressive regime, not all persons in Venezuela who oppose the current regime are necessarily Convention refugees".

[18] The RPD member concluded that the applicant's "allegations show[ed] discrimination only and they do not rise to the level of persecution". He also concluded that should they return to Venezuela, the applicants would not face a danger of torture or a risk to their lives or of cruel and unusual treatment or punishment.

II. **Issues Raised by the Applicants**

[19] The applicants raised a number of arguments, which may be grouped under two headings.

[20] The first interrelated arguments concerned whether the RPD Member conducted an unreasonable assessment of persecution and risk. The applicants challenged the RPD Member's conclusion that the pressure and harassment by the applicant's work supervisors did not "not engage her core human rights", on the basis that political opinion is a basis for a well-founded fear of persecution under *IRPA* s. 96 (referring to *Canada (Attorney General) v Ward*, [1993] 2 SCR 689). The applicants also challenged the RPD Member's conclusion that the applicant's allegations showed "discrimination only and … do not rise to the level of persecution". They

submitted that if the evidence established a series of actions that are discriminatory, the RPD Member was required to consider the cumulative nature of the actions – that is, whether the cumulative effects of the discriminatory conduct amount, in the aggregate, to persecution – and if they did not, to explain why (referring to *Mete v Canada (Minister of Citizenship and Immigration)*, 2005 FC 840 (Dawson J.); *Canada (Minister of Citizenship and Immigration) v Munderere*, 2008 FCA 84; and *Mohammed v Canada (Minister of Citizenship and Immigration)*, 2009 FC 768 (Russell J.)).

[21] Second, the applicants submitted that the RPD Member (i) imposed too high a burden on the applicants when he concluded that they would not be at any "particular or special risk of harm" if they returned to their native country; and (ii) ignored objective country evidence of similarly situated opponents of the PSUV regime in Venezuela. This point was also made to support the applicant's arguments about her own activities under *IRPA* subs. 97(1).

[22] The respondent submitted that the RPD Member's decision was reasonable. The Minister contended that the evidence does not rise to the level of persecution. The pressure from her superiors at work did not truly constrain the applicant's political expression. Their insistence that the applicant take on unusual or extra duties, such as visiting local jails, scolding her for tardiness and requiring that she attend political rallies, did not constitute persecution. Their threats related to losing work benefits were not persecution. While harassment may constitute persecution, it does so only if it is sufficiently serious and occurs over such a long period of time that an applicant's "physical or moral integrity" is threatened, citing *Retnem v Canada (Employment and Immigration)*, A-470-89, May 6, 1991, reported at (1991) 132 NR 53 (FCA)

and related case law. The respondent also cited case law for the proposition that for mistreatment to be considered persecution, it must be serious, repetitive, systematic and relentless. The respondent argued that none of these criteria existed on the evidence in this case.

[23] Further, according to the respondent, the RPD Member did not ignore any objective country evidence. That evidence did not support the argument that anyone who supports or is suspected of supporting the opposition will be persecuted. In addition, the respondent submitted that the RPD Member's findings were within his role as the trier of fact.

[24] Finally, the respondent submitted that the country condition evidence was not consistent with, or sufficiently linked to, the applicant's own profile and risk of persecution, and therefore did not assist her claim.

III. **Standard of Review**

[25] The standard of review is reasonableness, under the principles set out by the Supreme Court in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65. In conducting a reasonableness review, the court considers the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified: *Vavilov*, at para 15.

[26] Reasonableness review concerns both the reasoning process that led to the decision and its outcome: *Vavilov*, paras 83, 86; *Delta Air Lines Inc. v. Lukács*, 2018 SCC 2, [2018] 1 SCR 6, at para 12. A reasonable decision is one that is based on an internally coherent and a rational

chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, at para 85.

[27] The onus is on the applicant to demonstrate that the decision is unreasonable: *Vavilov*, at paras 75 and 100.

IV. **Analysis**

A. *Was the Member's Assessment of Persecution and Risk Unreasonable?*

[28] The applicant's submissions raised two principal alleged errors of law or mixed law and fact. According to the applicant, the RPD member erred by failing to conduct a cumulative analysis of the applicant's grounds for claiming persecution (that is, the cumulative impact of the discriminatory behaviour on the applicant); and by failing to specifically articulate why the cumulative impact of that behaviour did not amount to persecution under the *IRPA.*

[29] I agree with the applicant that that the RPD member was "duty bound to consider all of the events which may have an impact on a claimant's claim that he or she has a well founded fear of persecution, including those events which, if taken individually, do not amount to persecution, but if taken together, may justify a claim to a well founded fear of persecution": *Munderere*, at para 42; see also *Retnem*, at para 4. In *Munderere*, Nadon JA, speaking for the Federal Court of Appeal, accepted the following principles set out by Dawson J. in *Mete* at paragraphs 4-6:

> [4] The following three legal principles are not controversial. First, in *Rajudeen v. Canada (Minister of Employment and*

> *Immigration)* (1984), 55 N.R. 129, the Federal Court of Appeal defined persecution in terms of: to harass or afflict with repeated acts of cruelty or annoyance; to afflict persistently; to afflict or punish because of particular opinions or adherence to a particular creed or mode of worship; a particular course or period of systematic infliction of punishment directed against those holding a particular belief; and persistent injury or annoyance from any source.
>
> [5] Second, in cases where the evidence establishes a series of actions characterized to be discriminatory, and not persecutory, there is a requirement to consider the cumulative nature of that conduct. This requirement reflects the fact that prior incidents are capable of forming the foundation of present fear. See: *Retnem v. Canada (Minister of Employment and Immigration)* (1991), 132 N.R. 53 (F.C.A.). This is also expressed in the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status ("Handbook on Refugee Status") in the following terms, at paragraph 53: [citation omitted by Nadon JA]
>
> [6] Third, it is an error of law for the RPD not to consider the cumulative nature of the conduct directed against a claimant. See: *Bobrik v. Canada (Minister of Citizenship and Immigration)* (1994), 85 F.T.R. 13 (T.D.) at paragraph 22, and the authorities there reviewed by my colleague Madam Justice Tremblay-Lamer.
>
> (*Munderere*, at para 41)

[30] In *Munderere*, the certified question did not concern a cumulative grounds analysis, but Nadon JA analyzed the issue at paragraphs 50-51. He concluded that although neither the RPD nor the Federal Court had squarely addressed the issue, he was satisfied that the RPD's silence did not constitute a reviewable error given the merits on which the cumulative analysis would have been made.

[31] In the present case, I am satisfied that although the RPD Member did not expressly state that he was conducting a cumulative analysis, he in fact did so. At the beginning of the analysis,

the Member stated that he was unable to find that "the problems that the [applicant] encountered in her home country amounted to persecution" under *IRPA* s. 96. He then went through each of the applicant's arguments and made findings on each, concluding that none on their own constituted persecution. The Member then concluded that the applicant's "allegations show[ed] discrimination only and they do not rise to the level of persecution". Thus, while not using the word "cumulative" itself or a synonym, the Member's analysis was in substance both itemized and cumulative.

[32] I note that in *Vavilov*, the Supreme Court observed that a decision maker's reasons need not be measured against a standard of perfection (at para 91). While it would have been preferable for the Member's reasons to state expressly that the analysis was an assessment of whether the allegations cumulatively amounted to persecution, the failure to identify or label the analysis as such does not give rise to a reviewable error so long as in substance, it complies with the requirements of *Mete* and *Munderere*. In my view, in addition to making the overall conclusions described already, the Member concluded that the itemized claims of persecution lacked merit. This explains why the Member did not find that the grounds, considered cumulatively, did not amount to persecution: they did not amount to persecution cumulatively because each was independently unmeritorious. That same reason also distinguishes the present case from *Mohammed* (at paras 66-67), cited by the applicant, in which the Court held that the Board "completely failed" to consider the cumulative effect of the conduct at issue.

[33] The applicant also objected to the RPD Member's conclusion that the pressure and harassment by the applicant's work supervisors to join the PSUV and to attend rallies did not

"not engage her core human rights", referring to the Supreme Court of Canada's decision in *Ward*. On this issue, the applicant focused on the Member's finding that the applicant's feeling that she was forced to join the PSUV and being pressured to attend partisan government rallies was "certainly not good" but did not engage her core human rights.

[34] There is substantial merit in the applicant's argument that being forced to join a political party that one does not support, and being pressured into making public demonstrations of support for that party, engage fundamental or core concerns about political opinion as protected in s. 96 of the *IRPA*: see *Ward* and *Klinko v Canada (Minister of Citizenship and Immigration)*, [2000] 3 FC 327 (CA), at paras 21-27. However, neither of those circumstances occurred in this case. The applicant stated that she never formally joined the PSUV and refused to attend political rallies in support of the party. The applicant did register for and obtain a "Homeland Card" issued by the PSUV, but she did not argue on this application that this registration was equivalent to joining the PSUV. In the absence of stronger evidence showing that the applicant was forced, against her beliefs, to engage with the PSUV, the RPD Member's assessment of the evidence on this point was not unreasonable.

[35] I also see no basis to interfere with the Member's conclusion that the applicant was "no worse off" for having refused to attend the pro-PSUV rallies. While the applicant sought to argue that the Member should have reached a different conclusion on the evidence, the evidence did not constrain the Member so as to render the conclusion on that issue untenable. The Member's assessment of the evidence is entitled to deference, particularly on questions of fact including issues of cause and effect: *Vavilov*, at paras 99, 101, 105 and 125-26.

[36] The applicant also made concerted efforts in her written submissions on this application to persuade the Court that the Member unreasonably assessed the evidence. However, the Court cannot re-weigh or re-assess the evidence in the place of the Member. To do so would be inconsistent with the Court's role on judicial review and the Member's role as the primary fact-finder: see *Vavilov*, at paras 125-126.

B. *Did the RPD Member Impose an Unlawful Burden on the Applicants or Ignore Objective Country Evidence?*

[37] The applicants contended that the RPD Member imposed too high a burden on the applicants when he concluded that they were not at any "particular or special risk of harm" if they return to Venezuela. The applicant's submission took the quoted phrase from the following passages in the RPD's decision:

> The claimant also said that she would be at risk as a former civil servant. Counsel has not brought forward any source material that would confirm that claim. Indeed, I have conducted an extensive search in the country documents for anything that would confirm this point of view and I have unfortunately been unsuccessful.
>
> I would also point out that the claimant is no longer a government employee and I cannot see how she would be subject to any particular or special treatment by the regime.
>
> […]
>
> Indeed, it would appear that many of the problems encountered by the [applicant] at her work may have been designed to encourage her to quit. Now that she has done just that, I do not see how the [applicant] would have a problem from her former government employer.

[38] In my view, the Member did not place an extra or improper burden on the applicants. Read in context, the Member's reasons were analyzing whether the principal applicant would be

subject to persecution given that she had left her job with the government. The Member "conducted an extensive search in the country documents [for] anything that would confirm" the applicant's position and analyzed whether the principal applicant would be persecuted due to her status as a civil servant. The Member concluded that the answer was no. Then he recognized that the applicant was no longer a civil servant (having quit her job before leaving the country) and concluded that she was even less likely to be persecuted as a result. The phrase "particular or special treatment" did not add any improper legal burden on the applicant.

[39] The applicants next submitted that the RPD Member ignored objective country evidence of similarly situated opponents of the PSUV regime in Venezuela. They based this submission on the principles emanating from *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, [1999] 1 FC D-53, [1998] FCJ No 1425 (Evans J.), esp. at paras 15-17. *Cepeda-Gutierrez* contemplates that a reviewing court may infer that a decision maker made an erroneous finding of fact "without regard to the evidence" if the decision maker's reasons failed to mention evidence that was relevant to the finding and that pointed to a different conclusion from the one reached by the decision maker. A decision-maker need not refer to every piece of evidence before it, but the burden to explain contradictory evidence increases with the materiality of the evidence. The impugned decision may be set aside if the non-mentioned evidence is critical, contradicts the decision and the reviewing court infers that the decision maker must have ignored the material before it.

[40] The applicants argued that the Member focused only on the country condition evidence supporting his conclusion, while ignoring evidence that did not. The applicants made lengthy

submissions referring to country condition evidence in order to show that persons similarly situated to the applicants were subject to widespread persecution and abuses because they were known to be, or suspected of being, politically opposed to the PSUV government and its policies and were "politically and actively opposed" to the regime. The applicants contended that the Member had a duty to address some of the central documents that directly contradicted his findings and cited those documents to the Court.

[41] The respondent disagreed on the basis that the principles in *Cepeda-Gutierrez* that require a decision maker to address contradictory evidence do not apply when the evidence is "general documentary evidence", referring to *Shen v Canada (Citizenship and Immigration)*, 2007 FC 1001 (Pinard J.), at paras 4-6, which quoted *Cepeda-Gutierrez* at para 16 ("the reasons given by administrative agencies are not to be read hypercritically by the court […] nor are agencies required to refer to every piece of evidence that they received that is contrary to their finding"). This exception has been applied as recently as *Csiklya v Canada (Citizenship and Immigration)*, 2019 FC 1276 (Ahmed J.), at paras 22-23.

[42] On the application of an exception to *Cepeda-Gutierrez* for general documentary evidence, I make two observations. First, there are cases that do not give general documentary evidence or country condition evidence an exemption from the *Cepeda-Gutierrez* analysis: see the discussion of Boswell J. in *Koppalapillai v. Canada (Citizenship and Immigration)*, 2018 FC 235, at paras 20-25, and in particular, the "pragmatic" approach to this issue applied by Boswell J. based on *Vargas Bustos v Canada (Citizenship and Immigration)*, 2014 FC 114 (O'Keefe J.), at paras 35-39.

[43] Second, the continuing application of an effective exemption from the *Cepeda-Gutierrez* approach must now be considered in the context of *Vavilov*. I recently explained my view that *Cepeda-Gutierrez* and *Vavilov* set out substantively the same approach to the assessment of critical facts that may (or may not) constrain a decision maker: see *Khir v Canada (Citizenship and Immigration)*, 2021 FC 160, at paras 37-49. The question then is whether the judicial review principles in *Vavilov* would tolerate an exemption for country condition evidence from a decision maker's responsibility to consider critical contrary facts expressly, or the requirement to explain such inconsistent evidence by way of justification.

[44] That question does not need to be resolved in this case. The Member concluded that the applicants did not demonstrate that they themselves face a serious possibility of persecution on a Convention ground, an onus they bear on the application: *El Assadi Kamal v Canada (Citizenship and Immigration)*, 2018 FC 543 (Roussel J.), at para 11; *Awadh v Canada (Citizenship and Immigration)*, 2014 FC 521 (Noël J.), at paras 18-19.

[45] As a matter of law, to support their claims under s. 96, the applicants may show that they face a well-founded fear of persecution by adducing evidence that a group of persons in their home country is persecuted on a Convention ground, and that the applicants themselves belong to, or share sufficient characteristics with, that persecuted group. By showing that they are similarly situated, the generalized evidence of the group's treatment may be tied or "personalized" to the specific applicants so as to ground an objectively-based fear of persecution: see *Salibian v Canada (Minister of Employment and Immigration)*, [1990] 3 FC 250 (CA), at p. 258; *Fi v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1125, [2007] 3 FCR 400

(Martineau J.), at paras 13-17; *Olah v Canada (Citizenship and Immigration)*, 2017 FC 921 (Southcott J.), at paras 14-18; *Conka v. Canada (Citizenship and Immigration)*, 2018 FC 532 (Strickland J.) at paras 19-21; *Fodor v Canada (Citizenship and Immigration)*, 2020 FC 218 (McHaffie, J.) at paras 21-42.

[46] It was clear from the Member's reasons that the applicants in this case did not discharge their burden to show that they personally faced a serious possibility of persecution. On the Member's view, the applicants' case was that the principal applicant would be persecuted (a) as a former civil servant who did not support the government party and whose superiors carried out an internal campaigned designed to pressure her to quit her job (which she did), and (b) as an individual who had participated in certain anti-government rallies. I have already noted the Member's analysis on the applicant's risk of persecution as a result of being a former civil servant, during which the Member stated that he had "conducted an extensive search in the country documents" with respect to that issue.

[47] On opposing the government and her participation in rallies, the Member noted that there were mass demonstrations in the streets of Venezuela when the applicants were still living there. The demonstrations involved "tens of thousands of ordinary Venezuelans". Although the Member observed that police and security forces were present and were justifiably accused of dealing harshly with demonstrators, "the fact is that there [were] many thousands of people in Venezuela" who loudly oppose the government regime and that it was therefore "possible to oppose the regime in Venezuela". The Member concluded that "not all persons in Venezuela who oppose the current regime are necessarily Convention refugees". Overall, the Member

concluded that if they were to return to Venezuela, the applicants would not "face a serious possibility of persecution and therefore they do not have a well-founded fear of persecution" there. Assuming that certain elements of the country documents may constrain a decision or must be addressed, as described in *Cepeda-Gutierrez*, I would not interfere with the Member's overall conclusion in this case. While the applicant attempted to characterize her role in protesting against the government as an "active" one, she did not give evidence that she was extensively involved personally in opposition activities or that she occupied a leadership role in any opposition party or group. I do not infer that the Member ignored the evidence of potential persecution described in the cited country condition documents or find that the Member's conclusion was untenable.

[48] I conclude therefore that the applicants have not demonstrated that the Member's decision was unreasonable.

V. **Conclusion**

[49] For these reasons, the application to set aside the RPD Member's decision must be dismissed. Neither party proposed a question to certify and I agree there is none.

JUDGMENT in IMM-5396-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified for appeal under paragraph 74(*d*) of the *Immigration and Refugee Protection Act.*
3. There is no costs order.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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