

Federal Court



Cour fédérale

Date: 20210520

Docket: IMM-4827-19

Citation: 2021 FC 472

Ottawa, Ontario, May 20, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

**NORA ZENAYDA REYES RAMIREZ
ALINSON ELI RIVAS REYES
GENESIS ITZAYANA LOPEZ REYES**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants seek judicial review of a decision by the Refugee Protection Division [RPD] dated April 12, 2019, rejecting their claim for refugee protection.

[2] The Principal Applicant, Nora Zenayda Reyes Ramirez, is a citizen of Honduras. She is the mother of four (4) minor children, two (2) of whom are the Minor Applicants in this case. The Minor Applicants are the Principal Applicant's first child, who is a citizen of Honduras, and her fourth child, who is a citizen of the United States. The Principal Applicant has two (2) other children, who are citizens of Honduras. They are staying with the Principal Applicant's mother in Honduras.

[3] In the amended narrative attached to her Basis of Claim form [narrative], the Principal Applicant claims to fear persecution in Honduras at the hands of her third child's father. She alleges that he is her ex-companion, a drug addict and an associate in a criminal gang. In March 2013, he started abusing and intimidating her emotionally and physically. He threatened her, while pregnant, that if she ever left him, his criminal gang members would help him locate her and abduct their unborn child. In May 2013, the Principal Applicant left him and fled to her mother's house located two and a half hours away. He kept calling the house asking about her and the child. He even came to her mother's house several times looking for her and threatened to make her pay for leaving him and take away the child.

[4] In June 2014, the Principal Applicant travelled to the United States with her first child in order to escape the violence and abuse suffered at the hands of her third child's father, the violence and threats of gang members, including her first child's uncle, who attempted to kidnap him in 2007. The Principal Applicant left her other two (2) children with her mother in Honduras.

[5] The Principal Applicant and her first child were intercepted by the Department of Homeland Security and were detained for having entered the United States illegally. They were subsequently released and ordered to appear before an immigration judge. The Principal Applicant applied for asylum in June 2015.

[6] While in the United States, the Principal Applicant gave birth to her fourth child in 2016.

[7] Fearing removal to Honduras following the arrival of a new President, the Principal Applicant came to Canada along with the Minor Applicants. They claimed refugee protection on June 26, 2017.

[8] On April 12, 2019, the RPD rejected their claims for lack of credibility. The RPD did not believe the Principal Applicant's claim of spousal abuse because of the inconsistencies in her narrative, a handwritten declaration prepared in the context of her claim for asylum in the United States and her testimony during the hearing. The RPD found the Principal Applicant's inability to provide a satisfactory explanation for the inconsistencies and omissions on material facts affected her overall credibility. In the RPD's view, the Principal Applicant failed to establish that her third child's father continued to be a threat on a balance of probabilities.

[9] In their application for judicial review, the Applicants challenge the RPD's assessment of the Principal Applicant's credibility.

II. Analysis

[10] Both parties agree that the applicable standard of review is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16-17 [*Vavilov*]).

[11] Where the standard of reasonableness applies, the Court shall examine “the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome” (*Vavilov* at para 83). It must ask itself “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov* at para 99). The burden is on the party challenging the decision to show that it is unreasonable (*Vavilov* at para 100).

[12] The Applicants submit that the RPD erred in its credibility findings for several reasons.

[13] First, they argue that the RPD put too much emphasis on the fact that the handwritten declaration differed from the narrative, failing to consider the context in which the handwritten declaration was prepared. At the time, she was a young single mother with a low level of education, trying to enter the United States with no real knowledge of how to file an asylum claim. It is only when she consulted an attorney in the United States that she was advised to focus on her problems with the third child’s father.

[14] Second, they argue that the RPD failed to give proper weight to the Principal Applicant's medical report "proving she was raped". In the Applicants' view, the RPD's decision is vague in its analysis and fails to "respect" the *Chairperson Guidelines 4: Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*].

[15] Third, they argue that the RPD unreasonably discounted the declarations of family members attesting to the abuse she suffered prior to leaving Honduras and the fact that she feared her third child's father.

[16] I am not persuaded by these arguments.

[17] The Principal Applicant presented two (2) different narratives regarding her fear of persecution. In the handwritten declaration seized by the Canadian authorities, the Principal Applicant alleges that the agent of persecution is her first child's paternal uncle, which she describes as a drug addict and the main ringleader of a gang of young people who rob houses and attack cars and people in the village. Her fear is that one day he and his brothers will take her first child away from her and turn him into a gangster. While there is a rumour that the uncle was murdered, she fears he may be in hiding since his body was not found. She is also afraid that all of her children may become delinquents. She writes that she was unable to find work in Honduras and moved to the United States with her first child, with the objective of eventually bringing her other two (2) children, her mother and her grandmother to escape poverty. Unlike in her narrative, she omits to mention that she and her eldest child fled from Honduras, following

the physical and emotional abuse sustained at the hands of her third child's father or that she feared that he or members of his gang would take her third child from her.

[18] The RPD gave the Principal Applicant the opportunity to explain the important differences between her narrative and her handwritten declaration.

[19] The RPD rejected the Principal Applicant's explanation that it was not a priority at first for her to mention the third child's father in her handwritten statement and that it was only after she gave her story to the American attorney that it became a priority. The RPD concluded that the Principal Applicant changed her initial declaration regarding her agent of persecution and the incidents that made her leave Honduras with her first child. It found that if she indeed faced a fear for her and her child's life, the Principal Applicant would have stated in a consistent manner who persecuted her and for what reason. The RPD concluded that the inconsistencies and omissions between the two (2) stories on material facts affected the Principal Applicant's overall credibility.

[20] The RPD also found the Principal Applicant's testimony confusing, hesitant and evasive and there were omissions and inconsistencies for which she did not provide a satisfactory explanation, which again affected her overall credibility.

[21] For example, the RPD found the Principal Applicant's explanation why she had not fled Honduras with her third child unsatisfactory. Despite his father's consistent threats to take him away, the Principal Applicant fled to the United States along with her eldest child, leaving

behind her third child at her mother's house where his father had visited several times in the past. When asked why she left the third child behind, the Principal Applicant replied that it was because he was "too little". Asked to explain why she left him with her mother, the Principal Applicant adjusted her earlier testimony that she was afraid her ex-companion would kidnap their child. Instead, she stated that it was not his intention to take him away and that he had not gone back to her mother's house. Then, when asked when the third child's father had last visited her mother's house, the Principal Applicant responded that she did not remember. The RPD found that the Principal Applicant's behaviour of leaving behind her third child and the fact that his father had taken no action to take him away since her departure were inconsistent with her allegation that he wanted revenge for her leaving him.

[22] Another example relates to a statement in her narrative where she indicates that when she was pregnant with her third child, the child's father took her to his aunt who forcibly gave her an injection in order to abort the pregnancy. At the hearing, the Principal Applicant testified that he took her to a "lady" who gave her the injection but that she did not know who the "lady" was. The RPD found that if the incident had happened, the Principal Applicant would have testified in a consistent manner as to whether the woman was a relative of the third child's father.

[23] Likewise, the RPD asked the Principal Applicant whether she feared her first child's father. She responded in the affirmative alleging that she was afraid he would force her to go back to him, because they had a child together or he would kill her. Asked on what she based her fear considering she did not have any news from him for about ten (10) years, the Principal Applicant became evasive and alleged that a week before the hearing, she learned that her first

child's father had returned to Honduras and visited her mother's house on three (3) occasions. When asked why she did not report it to her lawyer or at the outset of the hearing, she testified that she did not think it was important because he had not made "big threats" against her.

[24] The RPD clearly considered the Principal Applicant's explanations and explained in a coherent and intelligible manner why it rejected them. Given the numerous inconsistencies and omissions in the Principal Applicant's testimony, it was reasonably open to the RPD to find that the Principal Applicant lacked credibility and to reject her explanations regarding the omission of material facts in the handwritten declaration. Her relationship to the third child's father was central to her asylum claim in Canada. If the incidents with him were as important as she alleges, it was reasonable to expect that they would have been included in the handwritten statement.

[25] With respect to the Applicants' submission regarding the medical report, I am satisfied that the RPD properly applied the *Gender Guidelines*. The Applicants have not clearly articulated how the RPD's questions failed to respect the *Gender Guidelines*. In any event, the RPD explicitly stated that it considered the *Gender Guidelines* and that, where there was confusion regarding dates or the chronological order of events, it gave the benefit of the doubt to the Principal Applicant. The RPD assigned little weight to the medical report because the Principal Applicant gave hesitant and incoherent testimony on the nature of her visits with the doctor who authored the report and because it provided insufficient details regarding the alleged trauma.

[26] I note that the medical report is dated May 2015, but reports on events taking place in May 2013. It is also unclear from the report whether the alleged [TRANSLATION] “physical assault by her spouse” occurred on May 12, 2013, or whether the Principal Applicant was seen in the emergency on that date. The report states that the Principal Applicant was six (6) months pregnant at the time. If the child was born in October 2013 as can be seen from the certified tribunal record, this would suggest that the Principal Applicant was either not six (6) months pregnant when she saw the doctor or that she waited several months after the alleged assault to go to the hospital. Either way, I find that the RPD could reasonably afford little weight to the medical report given its lack of precision and detail.

[27] As for the declarations provided by members of the Principal Applicant’s family, the RPD reasonably noted that this evidence did not support her allegation that, after she left the third child’s father in May 2013, he persecuted her in such a way that she had to leave Honduras to save her life.

[28] An applicant who seeks to have conclusions about his or her credibility set aside bears a heavy burden. Findings of credibility and the assessment of evidence lie at the heart of the RPD’s expertise and require a high degree of deference from this Court (*Singh v Canada (Citizenship and Immigration)*, 2016 FC 787 at para 16; *Tosha v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1741 at para 21). While the Applicants may disagree with the findings of the RPD, it is not for this Court to re-assess and re-weigh the evidence to reach a conclusion that is favorable to the Applicants (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[29] To conclude, I am satisfied that, when read holistically and contextually, the RPD's decision meets the reasonableness standard set out in *Vavilov*. The decision is based on internally coherent reasons, and it is justified in light of the relevant facts and the law. The reasons are also transparent and intelligible.

[30] Accordingly, the application for judicial review is dismissed. No questions of general importance were proposed for certification and I agree that none arise.

JUDGMENT in IMM-4827-19

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed;
2. The name of the third Applicant is corrected to reflect its proper spelling being "Genesis Itzayana Lopez Reyes"; and
3. No question of general importance is certified.

"Sylvie E. Roussel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-4827-19

STYLE OF CAUSE: NORA ZENAYDA REYES RAMIREZ ET AL v THE
MINISTER OF CITIZENSHIP AND IMMIGRATION

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