Federal Court  Cour fédérale

Date: 20210603

Docket: IMM-736-20

Citation: 2021 FC 537

Ottawa, Ontario, June 3, 2021

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

DIANNE VICENTE
A.K.A. DIANNE PECSON VICENTE

Applicant

and

THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Dianne Pecson Vicente, a citizen of the Philippines, seeks judicial review of the Decision of the Refugee Appeal Division [RAD] dated January 7, 2020 [the Decision] dismissing her appeal and confirming the decision of the Refugee Protection Division [RPD] dated August 20, 2018, made pursuant to paragraph 111(1)(a) of the *Immigration and Refugee*

Protection Act, SC 2001, c 27 [*IRPA*], that the Applicant is neither a Convention refugee nor a person in need of protection as defined in sections 96 and 97 of the *IRPA.*

[2] For the following reasons, I am not satisfied that the RAD committed any error in reaching its findings. The Decision is transparent, intelligible, and well supported by the relevant facts and law. The application is accordingly dismissed.

II. Background

[3] The Applicant claimed refugee protection in Canada along with her mother, her sister Angelie, and the latter's minor daughter. The Applicant's fear of persecution was based on the abuse she allegedly witnessed her father perpetrate on her family members.

[4] The RPD accepted the claim for protection of the Applicant's mother as it found that she was the victim of domestic violence and there was no viable internal flight alternative [IFA] and no effective state protection for victims of domestic violence. However, the RPD rejected the claims of the Applicant, her sister and niece.

[5] On appeal to the RAD, the three appellants sought to adduce new evidence in the form of a letter from the Applicant's brother; however, the evidence was ruled inadmissible.

[6] The RAD upheld the RPD decision with respect to the Applicant, finding that she is neither a Convention refugee nor a person in need of protection. However, it accepted the claims of the Applicant's sister and niece after concluding that they did not have a viable IFA.

[7] The RAD disagreed with the RPD's credibility findings and found that the Applicant's sister was herself the victim of domestic abuse at the hands of her husband and the father of her daughter. The evidence before the RAD was that persons in violent marriages cannot divorce under Philippine law and as a result, are unable to remove themselves from the relationship. Their inability to divorce exposes women and children to violence.

[8] The RAD concluded that, unlike her adult sister, the Applicant was single and did not fear a violent partner in the Philippines. It found that she did not fear domestic violence from a husband and was not in a relationship that cannot be dissolved under Philippine law. Moreover, the Applicant did not establish that her father would be interested, motivated, or even able to locate the Applicant in either Cebu or Manila. The RAD confirmed the RPD's finding that the Applicant had a viable IFA in the Philippines.

III. Issues

[9] At the hearing before this Court, counsel for the Applicant limited his arguments to two issues. The first issue was whether the RAD erred in refusing the new evidence from the Applicant's brother. The second was whether the RAD erred in its determination that a viable IFA is available to the Applicant.

IV. Standard of Review

[10] There is no dispute regarding the applicable standard of review. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], at paragraph 10, the Supreme

Court of Canada concluded that the presumptive standard of review is reasonableness, and a reviewing Court should only derogate from that presumption "where required by a clear indication of legislative intent or by the rule of law." There is no such indication in this case.

[11] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). The reviewing court must consider "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). The reviewing court must therefore ask "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, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at paras 47, 74 and *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2 at para 13).

V. Analysis

A. *Whether the RAD erred in refusing to admit new evidence on appeal*

[12] The Applicant takes issue with the RAD's finding that her brother's letter was inadmissible on appeal. The Applicant submits that if the RAD had properly read all the material on the record, it would have noted the same signature in a letter from the Applicant's brother in the disclosure package that was before the RPD. The Applicant points out that the disclosure

package contains an identity document from the Applicant's brother. The Applicant contends that she did not resubmit the same identity document from her brother as it was already on the RPD record. In the circumstances, the Applicant submits that the RAD failed to consider and ignored evidence from the same source that was previously accepted and determined to be credible. I disagree.

[13] The evidence submitted to the RPD was not subject to the same criteria for admission as evidence before the RAD. Subsection 110(4) of the *IRPA* limits what evidence can be accepted on appeal to evidence that arose after the RPD decision, that was not reasonably available at the time of the decision, or that could not reasonably have been expected in the circumstances to bring to the RPD before the RPD decision. If the evidence meets one or more of these exceptions, the RAD must then decide if the evidence is new, credible and relevant before it can accept it.

[14] At paragraphs 10 to 12 of the Decision, the RAD provides detailed reasons why the brother's letter was not admitted.

> [10] The proposed new evidence is a typed letter, which is allegedly from the adult Appellants' brother. The adult Appellants have three brothers. It is not clear which brother provided this letter as the signature is indecipherable, the letter is not sworn, and the author of the letter has provided no identity document.
>
> [11] The letter is not dated, but the content of the letter describes incidents where the brother was confronted by Angelie's husband and detained by his father in the month following the RPD rejection of the Appellants' claims.
>
> [12] I do not find brother's letter to be credible in terms of the source and circumstances in which it came into existence, and it is therefore inadmissible as new evidence on appeal. I also find the

> timing of the evidence, which is immediately following the RPD rejection, to be suspicious.

[15] Although it appears, based on the review of the certified tribunal record by Applicant's counsel at the hearing of the present application, that the letter was signed by the same brother who submitted an earlier letter that was before the RPD, the RAD did not have the benefit of the same detailed argument regarding the source of the letter. The onus was on the Applicant to satisfy the RAD regarding the identity of the person who signed the letter as well as when it was signed.

[16] In any event, the RAD found that the letter ought not to be admitted for reasons other than its source. It was reasonable for the RAD to question the timing of the letter, presented shortly after the negative decision of the RPD.

[17] In the circumstance, I see no reason to disturb the RAD's finding on the admissibility of new evidence.

[18] I should also add that the Applicant has failed to show how this letter, even if accepted, would be material to the RAD's determinative IFA conclusion.

B. *Whether the RAD erred in its application and assessment of the IFA test*

[19] Although not explicit under section 96 of the *IRPA*, an IFA is an integral part of the Convention refugee definition. Once an IFA has been proposed, the onus shifts to the appellant to show that they do not have an IFA. In *Rasaratnam v. Canada (Minister of Employment and*

Immigration), [1992] 1 FC 706 (CA), the Federal Court of Appeal articulated the test to be applied in determining whether there is an IFA as follows, at paragraphs 5 and 6:

> 5. First, the Board must be satisfied on the evidence before it that the circumstances in the part of the country to which the claimant could have fled are sufficiently secure to ensure that the appellant would be able "to enjoy the basic and fundamental human rights".
>
> 6. Second, conditions in that part of the country must be such that it would not be unreasonable, in all the circumstances, for the claimant to seek refuge there.

[20] The Applicant takes issue with how the RAD expressed the IFA test and how it was applied.

[21] The Applicant argues that the RAD held that the Applicant would have to personally test out the IFA to prove that she requires protection. This argument is without merit. The RAD simply stated, as is good law, that the burden rests on the Applicant to prove on a balance of probabilities that there is no IFA: *Aigbe v Canada (Citizenship and Immigration)*, 2020 FC 895 at para 9. This does not require the Applicant to test out the IFA and then report the results.

[22] The Applicant further argues that the RAD misapplied the test by making assumptions about her father regarding substance abuse and influence. In addition, the RAD is said to have disregarded the lack of state protection available to the Applicant in the proposed IFAs. Again, these submissions are without merit.

[23] It was the Applicant’s burden to prove that the IFAs were unreasonable once the RPD gave notice of the cities of Cebu and Manila. The RAD correctly noted that the Applicant is

differently situated from her mother and sister, both of whom are unable to remove themselves from their spousal relationship.

[24] Contrary to the Applicant's submissions, the RAD did consider her particular circumstances and found that the alleged fear was unreasonable. The Applicant had not been in contact with her father for some time, the IFA was far from where her father was located and her father did not have the means or motivation to locate her.

[25] Finally, the RAD took into account the personal circumstances of the Applicant and found that conditions in the part of the country considered to be an IFA were such that it would be reasonable for the Applicant to seek refuge there:

> [45] The court has set a very high threshold for what makes an IFA unreasonable in all of the circumstances. The standard is high and requires proof of adverse conditions which would jeopardize the life and safety of the Appellant in travelling to and living in the IFA locations.
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> [46] The Appellant is young university educated woman. She is a registered nurse who worked in a hospital in the Philippines prior to coming to Canada in 2013. She is of the majority linguistic, ethnic and religious groups in the country. There is no reason to believe that she would not be able to find employment and housing in the larger centres of Manila or Cebu.
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> [Footnotes omitted.]

VI. Conclusion

[26] For the above reasons, I see no reviewable error in the RAD's determination that the Applicant is neither a Convention refugee nor a person in need of protection pursuant to paragraph 111(1)(a) of the *IRPA*.

[27] There was transparency and intelligibility in the decision making process of the RAD, and its Decision falls within a range of possible, acceptable outcomes, which are defensible in respect of the facts and law. The application for judicial review is accordingly dismissed.

[28] There are no questions for certification.

JUDGMENT IN IMM-736-20

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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