

Federal Court



Cour fédérale

Date: 20210922

Docket: IMM-537-20

Citation: 2021 FC 978

[ENGLISH TRANSLATION]

Ottawa, Ontario, September 22, 2021

PRESENT: The Honourable Mr. Justice Roy

BETWEEN:

ARISTEO VARGAS PEREZ

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] Aristeo Vargas Perez has been granted leave to apply for judicial review of a decision rendered on October 10, 2019 by the Refugee Protection Division [RPD]. The application for judicial review was made pursuant to section 72 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

I. Facts and RPD decision

[2] The application for judicial review does not include a transcript of the hearing conducted by the RPD on September 20, 2019. The facts to be considered are therefore those that appear in the decision itself and those alleged in the Basis of Claim Form (BOC Form).

[3] The applicant is a citizen of Mexico who, according to the BOC Form, was born in 1974. The BOC Form lists his immediate family. According to the information provided, he has a spouse and three daughters who, at the time the claim was made, were all living in Mexico.

[4] According to the BOC Form, the events giving rise to the claim began on May 30, 2017. The facts recounted in the BOC Form are that the applicant is a farmer; he claims he worked the land at a place designated as San Simon. He states that a criminal group arrived in the village, causing fear, and they wanted to take over the village. On May 30, 2017, two unknown people came to the applicant's workplace to ask him questions. He then noticed that they were armed and told them that the land on which he was farming belonged to someone else, that he was only a tenant of the land. The two people asked who owned the land and left. A week later, they returned to tell the applicant that they wanted to use his land to grow *amapola* (poppies). They further requested that the applicant work for them. The applicant speculates in his BOC Form that the authorities were on their side, so he did not want to report them because he was afraid.

[5] In June 2017, the individuals came twice and told him that he was to begin working for them in late July. During these weeks, individuals would come to visit the village driving luxury

vehicles. According to the applicant, he was threatened to follow their orders, or they might kill him.

[6] The applicant left Mexico for Canada on July 7, 2017. His refugee protection claim was submitted 9 months later on March 14, 2018.

II. Impugned decision

[7] Because the panel did not find a connection to any of the grounds set out in section 96 of the IRPA, the claim was analyzed under section 97. The RPD made its decision on the basis that the determinative issue was the applicant's credibility. This was based on Mr. Perez's inconsistency, contradictions and total lack of credibility. While not presenting all of these inconsistencies and contradictions, the RPD identified three that it set out in its reasons for decision.

[8] Thus, it was not clear where the applicant had lived since his birth in 1974. The RPD noted that it had questioned the applicant on numerous occasions to ensure that the applicant had a clear understanding of the questions posed about where he lived and where the land on which he claimed he worked was located. As the RPD stated, this is important information given that the alleged dispute is over this land. A question as mundane as the applicant's place of residence became confused. The RPD stated:

When the panel asked repeatedly . . . about his place of residence and the location of the land on which he allegedly worked as a farmer for years, since that was where the incidents had allegedly occurred, the claimant answered as follows: he asked the panel to question him about who had filled out the form, why he had to

provide that information, that it was his right, and stated that he had lived in Atlangatepec, another village. His counsel intervened, asking him simply to confirm where he had lived. The claimant then mentioned a neighbourhood called Brados Ecatepec, which he confirmed is located in the state of Mexico, next to the village of Chiconautla. The panel notes that at the end of the hearing, the claimant stated that he had continued to live in Topilco de Juarez in 2017. (para 13).

The RPD also noted that the applicant says he lived for several months in Mexico City.

[9] The RPD considered these explanations to be unreasonable. The panel was of the view that it could expect full answers even though the location where he allegedly experienced problems seems unclear at best. Information about where he supposedly took refuge from his attackers should also have been clearly presented.

[10] The second set of findings or inconsistencies relates to applicant's "agent" of harm. While the applicant says that he fears a criminal group in his BOC Form, he became more specific at the hearing when he began by stating that he fears hitmen and went on to associate these people with members of the Los Zetas cartel and the Familia Michoacana. But having stated that, he changed his mind and argued that he only feared Los Zetas. What is more, he did not identify anyone, only saying he feared the whole group. When asked why Los Zetas were not mentioned in his BOC Form, the applicant stated that he did not know why this information was not written on the form. When questioned by the RPD about the applicant's confirmation that the information submitted was complete, true and accurate, the applicant blamed his then attorney.

[11] The RPD did not accept that this information, which is central to the applicant's claim, was not included in the BOC Form. The RPD noted that "question 2(a) of the BOC Form explicitly asks him to state who he thinks caused the harm" (RPD decision, para 21). In the RPD's opinion, the applicant's credibility was thus undermined.

[12] The RPD added that "[t]he thing that made the claimant lose all credibility at the hearing was when he testified about what supposedly happened to him that caused him to flee his country" (para 23). This time, the RPD recounted other incidents, beginning in 2002, when, after his first harvest, "those men showed up on his land and talked to him kindly about obtaining his land" (para 26).

[13] The applicant stated that he left for Mexico City in 2003 while waiting for the situation to calm down; he was contacted in 2004; he eventually returned to start farming again. He continued his work until 2016 when these individuals returned. In paragraph 27 of the decision, the RPD noted that the applicant, at the hearing, "stated that he had been contacted by Los Zetas three times: the first in 2002 on his land; the second by telephone while he was in Mexico City; and finally, in 2016, again on his land." Responsibility for omitting this information was attributed to his lawyer, who did not write the incidents as they happened. The RPD then confronted him with the statement that the BOC Form was complete, true and accurate and contained no errors, or that he had no additions to make. For all answers, the applicant stated that he thought "his account contained all the information provided at the hearing."

[14] For the RPD, this was unreasonable. Such events, if they occurred, should have been mentioned in his BOC Form. This was a reasonable expectation. The questions in the BOC Form are explicit, however, said the RPD. This led the RPD to conclude that the applicant is not credible, to the point where it applied subsection 107(2) of the IRPA:

(2) If the Refugee Protection Division is of the opinion, in rejecting a claim, that there was no credible or trustworthy evidence on which it could have made a favourable decision, it shall state in its reasons for the decision that there is no credible basis for the claim.	(2) Si elle estime, en cas de rejet, qu'il n'a été présenté aucun élément de preuve crédible ou digne de foi sur lequel elle aurait pu fonder une décision favorable, la section doit faire état dans sa décision de l'absence de minimum de fondement de la demande.
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The direct consequence of the declaration described in subsection 107(2) is that the RPD's decision cannot be appealed to the Refugee Appeal Division. Paragraph 110(2)(c) provides:

(2) No appeal may be made in respect of any of the following :	(2) Ne sont pas susceptibles d'appel:
...	...
c) a decision of the Refugee Protection Division rejecting a claim for refugee protection that states that the claim has no credible basis or is manifestly unfounded;	c) la décision de la Section de la protection des réfugiés rejetant la demande d'asile en faisant état de l'absence de minimum de fondement de la demande d'asile ou du fait que celle-ci est manifestement infondée;

This will explain that the applicant's only recourse was an application for judicial review since an appeal to the RAD was not available to him.

III. Arguments

[15] The applicant complains of an error in the RPD's finding about its credibility. In the same breath, it is alleged that there was another error in the dismissal of the claim for lack of a credible basis. The Court is referred to subsection 69.1(9.1) of the IRPA. This section does not exist in the current version of the IRPA. It may be a section equivalent to subsection 107(2) of the current Act. Finally, there is a suggestion that the RPD violated a principle of procedural fairness.

[16] Accepting that the standard of review is that of reasonableness, the applicant is setting out to provide an explanation for his testimony regarding his place of residence. The argument presented is that the applicant was unable to explain the many inconsistencies because the questions were confusing, imprecise, or incomplete, leading the applicant to give imprecise and incomplete answers.

[17] As for the other incidents allegedly experienced by the applicant, they are also not inconsistent with the BOC Form as they do not relate to the period presented by the applicant. It is quite surprising that the applicant presents the period from 2002 and 2016 as being not relevant to his application. Yet, he described events that allegedly involved "agents of harm". They say they want to restrict the relevant period, from May 30, 2017 to July 7, 2017. Presumably, other time periods when incidents of a similar nature allegedly occurred should not be considered, that is, incidents involving the same individuals, who returned several years later and caused the applicant to seek refuge in Canada just weeks after the initial contact on May 30, 2017.

[18] Finally, the applicant complains about the application of subsection 69.1(9.1). In the applicant's opinion, since there is an error in the analysis of his credibility, the absence of a credible basis cannot be accepted. Put another way, if the RPD was wrong to find that the applicant lacked credibility, it follows that it would be unreasonable to find that there is no credible basis for the claim.

[19] As for the respondent, he argues that this applicant and his story are completely lacking in credibility. For the respondent, no errors have been demonstrated in the impugned decision.

[20] Noting that the standard of review is that the reasonableness, the respondent reminds us that the role of the judge in judicial review is not that of the administrative decision maker. Judicial deference is required. In the respondent's view, the reasons are clear and detailed, making the decision reasonable. The respondent submits that during the hearing before the RPD, he was confronted with omissions, contradictions and implausibilities in his testimony. In fact, the applicant did not submit any evidence to demonstrate or support the allegations underlying his alleged fear. As to the conclusion that there is no credible basis for the claim, the respondent relies on the decision of the Federal Court of Appeal in *Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89. Paragraph 52 of the decision, which is still good law, states:

[52] For these reasons, I agree with Teitelbaum J. that, having considered the oral and documentary evidence before it, the Board committed no reviewable error in stating that Mr. Rahaman's claim lacked a credible basis. Accordingly, I would dismiss the appeal and answer the certified question as follows:

Whether a finding that a refugee claimant is not a credible witness triggers the application of subsection 69.1(9.1) depends on an assessment of all the evidence in the case, both oral and

documentary. In the absence of any credible or trustworthy evidence on which each Board member could have determined that the claimant was a Convention refugee, a finding that the claimant was not a credible witness will justify the conclusion that the claim lacks any credible basis.

[21] In the end, not only was the RPD's finding on the applicant's credibility at the hearing not disturbed, but there was also no other evidence presented that the respondent believes can be considered. What the applicant seeks is to have this Court substitute its own findings for those of the RPD. It is not the role of the reviewing court to do so.

IV. Analysis and conclusion

[22] The RPD has given a meticulous account of why it cannot believe the version given by the applicant. In the applicant's arguments, I was unable to find a mention of how the RPD was flawed in its reasoning. The credibility of a witness depends on a number of factors. In this case, it seems rather obvious to me that the applicant's version was flawed.

[23] The difficulties encountered by the RPD are all real and valid. For example, very little is known about the applicant's whereabouts in Mexico. These are not difficult questions, however, to which nuanced answers may be necessary. The same is true of the involvement of Los Zetas. Even as the applicant stated that the basis for his claim was complete, true and accurate, it quickly became apparent that this was not the case. As his only defense in this regard, the applicant blamed his attorney.

[24] But what is more disturbing is that the event of May 30, 2017, which was allegedly the triggering event for the applicant's escape, where representatives of the said cartel allegedly came to meet with Mr. Perez on the very land they coveted, would not be the first meeting with the members of Los Zetas. Back in 2002, they reportedly approached the applicant in order to obtain the land he was cultivating. The applicant went to Mexico City in 2003 while waiting for the situation to calm down. He was contacted in 2004 and eventually returned to the site and worked there until 2016. In my opinion, these events are highly relevant; yet the applicant stated nothing about them other than when testifying before the RPD. How can these events, if real, not be included in his BOC Form? The only answer was that this is not the time period that was before the RPD. With respect, I cannot see how the applicant could attempt to artificially restrict the factual situation that involves what are such important events in the context of this case. It is not a matter of drawing from the past events that have nothing to do with what led the applicant to seek refuge in Canada. Thus, the explanations given are, on their face, unreasonable. Moreover, there is no explanation for the more than ten years spent on this same farm without, it seems, being in any way bothered by what were allegedly the same agents of persecution.

[25] I therefore conclude that the applicant's lack of credibility is established on the basis of the three sets of incidents. The only argument made by the applicant to challenge the RPD's finding of lack of a credible basis for the claim is that, because the RPD erred in its credibility analysis, it follows that the finding of lack of a credible basis can be attacked. There is a certain logic to this. But the premise is that there is an error in assessing the credibility of the applicant. However, the conclusion in this regard is quite different. The RPD found that the applicant's credibility was lacking; this finding has not been shown to be unreasonable. As a result, the

applicant's argument does not hold water. The reasons given by the RPD for finding a lack of credibility are based on an analysis that is consistent and rational. In *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, the Supreme Court set out the role of the reviewing court. It reads as follows:

[99] A reviewing court must develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks 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: *Dunsmuir*, at paras. 47 and 74; *Catalyst*, at para. 13.

[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.

[26] In this case, not only has the applicant failed to discharge his burden of proving that the decision is unreasonable, but I am also satisfied that the decision made by the RPD is justified, intelligible and transparent. It follows that the application for judicial review must be dismissed. There are no serious questions of general importance that can be applied to this case.

JUDGMENT in IMM-537-20

THE COURT’S JUDGMENT is as follows:

1. The application for judicial review is dismissed.
2. No question of general importance is certified.

“Yvan Roy”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-537-20

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