Federal Court Cour fédérale

Date: 20211125

Docket: IMM-2250-21

Citation: 2021 FC 1298

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 25, 2021

PRESENT: The Honourable Madam Justice Roussel

BETWEEN:

ELIDA ACOSTA RODRIGUEZ
MATILDA CAMACHO ACOSTA
FREDDY CAMACHO ACOSTA

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] The applicant, Elida Acosta Rodriguez, and her two children are citizens of Mexico. The applicant alleges that her ex-spouse was targeted by the Los Rojos cartel. Fearing for her life and that of her family, she entered Canada on July 7, 2017, with her ex-spouse and their children. On

September 21, 2017, the family claimed refugee protection, but her ex-spouse's application was later withdrawn for failure to appear on January 21, 2020.

[2] On February 5, 2020, the Refugee Protection Division [RPD] rejected the applicants' refugee protection claims. It found the applicant not credible because of her lack of candour in her testimony and numerous gaps in the evidence.

[3] On March 17, 2021, the Refugee Appeal Division [RAD] denied the applicants' appeal. Like the RPD, it found the applicants' story not credible, particularly because of the applicant's contradictory testimony about her moves, the history of her and her ex-spouse's U.S. visa applications, the delay in seeking refugee protection in Canada, and the lack of evidence about her ex-spouse's political involvement. In addition, the RAD found that the RPD did not violate the principles of procedural fairness when, among other things, it accepted into evidence the applicant's Basis of Claim Form [BOC Form], which the applicant had not signed or had translated.

[4] The applicants are seeking judicial review of this decision. They argue that the RAD unreasonably concluded that procedural fairness was not breached when the RPD allowed only 15 minutes for the applicant to check her and her children's BOC forms. They also argue that the RAD's lack of credibility finding is unreasonable. According to the applicants, the RPD should have questioned the applicant about the contradictions regarding her moves and considered her response to explain the contradiction in the number of times she applied for visas in the United States.

[5] The standard of review applicable to RAD decisions involving credibility and the assessment of evidence is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 143 [*Vavilov*]; *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 35; *Aguebor v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 732 at para 4 (FCA) (QL)). This same standard also applies to the RAD's finding that there was no breach of procedural fairness before the RPD. The issue in the case is not whether the RAD breached procedural fairness, but rather whether there was a breach before the RPD (*Chaudhry v Canada (Citizenship and Immigration)*, 2019 FC 520 at para 24; *Brown v Canada (Citizenship and Immigration)*, 2018 FC 1103 at para 25; *Abuzeid v Canada (Citizenship and Immigration)*, 2018 FC 34 at para 12).

[6] Where the standard of reasonableness applies, the Court is concerned with "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 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). Finally, the "burden is on the party challenging the decision to show that it is unreasonable" (*Vavilov* at para 100). That party must convince the Court that the decision has serious flaws that are "sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100).

[7] The Court cannot agree with the applicants' arguments.

[8] Regarding the alleged breach of procedural fairness, the RAD noted that when the applicant stated at the beginning of the hearing that the signature on the last page of her BOC Form was not her own and that the information had not been interpreted for her from French to Spanish, the RPD, on its own initiative, offered the applicant a 15-minute recess to review her form and those of her children. The RAD added that upon returning from the recess, the applicant stated that she had reviewed the documents and that they were complete, true and accurate. The applicant signed them and acknowledged that they had been translated to her. She also made some corrections to the account on which the refugee protection claims were based.

[9] The RAD concluded that in the RPD's doing as it did and its ensuring that the BOC Form was translated to the applicant and that she had signed it, its conduct in this regard was beyond reproach. The RAD further noted that the applicant was represented by counsel and that no objection was raised to the procedure followed. It then recalled the well-established principle that any breach of procedural fairness must be raised at the earliest opportunity and that failure to raise an objection at the hearing stage is tantamount to an implied waiver to raise it at a later stage.

[10] The Court is of the opinion that the RAD applied the correct legal principles (*Laguerre v Canada (Citizenship and Immigration)*, 2021 FC 701 at para 41; *Al-Farran v Canada (Citizenship and Immigration)*, 2017 FC 985 at para 27) and gave proper reasons for its conclusion. If the 15 minutes were insufficient, the applicant had an obligation to inform the RPD. However, the applicant did not object to the procedure followed or request a longer recess. The applicants have not demonstrated that the RAD's finding on this issue is unreasonable.

[11] Concerning the applicants' other arguments, the applicant was asked about her moves. She could have elaborated further in her testimony if she thought it necessary. Her counsel could also have asked her for further explanation. As for the number of visa applications submitted to the United States, the applicant does not explain how this omission translates into an unreasonable decision. Rather, the RAD's analysis focuses on the consequences of the multiple visa applications submitted by the applicant and her former spouse. According to the RAD, these multiple applications raise concerns about their intent to leave Mexico long before the events described in the narrative.

[12] In the Court's opinion, these arguments are essentially a request by the applicants to reassess their evidence. It is well established that findings concerning an applicant's credibility and the assessment of the evidence require a high degree of deference by this Court. In this case, the RAD conducted its own analysis of the record and listened to the audio tape of the hearing. Its conclusion about the applicant's lack of credibility is based on the entire record. While the applicants may disagree with the RAD's and the RPD's findings, it is not for this Court to reweigh and reassess the evidence to reach a conclusion that they would prefer (*Vavilov* at para 125; *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 59).

[13] In conclusion, the Court finds that when read holistically and contextually, the RAD's reasons bear the hallmarks of a reasonable decision (*Vavilov* at paras 97, 99).

[14] The application for judicial review is therefore dismissed. No question of general importance was submitted for certification, and the Court is of the opinion that none arise in this case.

JUDGMENT in IMM-2250-21

THE COURT ORDERS as follows:

1. The application for judicial review is dismissed; and

2. No question of general importance is certified.

"Sylvie E. Roussel"
Judge

Certified true translation
Johanna Kratz

FEDERAL COURT

SOLICITORS OF RECORD

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