

Federal Court



Cour fédérale

Date: 20211118

Docket: IMM-2218-20

Citation: 2021 FC 1266

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 18, 2021

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

**MARIA DE LOURDES ROMERO GOMEZ
JORGE BUSTILLOS ARAIZA
ANA CAMILA BUSTILLOS ROMERO
JORGE ENRIQUE BUSTILLOS ROMERO
ALEJANDRO BUSTILLOS ROMERO**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, Maria de Lourdes Romero Gomez (the principal applicant), her husband, Jorge Bustillos Araiza, and their three children are citizens of Mexico. The principal applicant alleges a threat to her life from a Mexican cartel.

[2] The applicants arrived in Canada in September 2014 and filed a claim for refugee protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] On January 21, 2020, the Refugee Protection Division [RPD] determined that the applicants were neither Convention refugees nor persons in need of protection. The RPD found that the applicants were not credible because there were several omissions in the principal applicant's Basis of Claim [BOC] form from items mentioned in the testimony of the principal applicant and her husband.

[4] The applicants are seeking judicial review of the RPD's decision under section 72 of IRPA. The application raises two issues, which I have framed as follows: did the RPD err (1) in its credibility analysis; or (2) in its treatment of the documentary evidence?

[5] Having carefully reviewed the record and the submissions of both parties, I conclude that this application must be dismissed. For the reasons that follow, I am satisfied that it was open to the RPD to determine that the explanations for the omissions in the BOC form were not credible, and that the RPD reasonably assessed the documentary evidence.

II. Background

[6] The principal applicant reports that her father was a well-known businessman and beef producer in their state of Mexico. On June 8, 2007, the principal applicant's father disappeared and his body was found the next day.

[7] The principal applicant suspects that her father was killed by the Los Caballeros Templarios cartel. The applicant explains that this cartel frequently threatens businessmen in their area of Mexico and kills them if they do not pay the cartel regularly. Her father never said that this group contacted him, but the applicant alleges that he told her about his suspicions that his wife, the principal applicant's stepmother, might be involved in the cartel.

[8] The principal applicant reports that to find out about the progress of the investigation into her father's murder, she repeatedly visited the office of the Public Prosecutor with her uncle. In May 2008, her uncle disappeared and his body was never found. The principal applicant alleges that about six months after her uncle disappeared, she began receiving threatening phone calls from an anonymous source. This anonymous source allegedly stated that he or she would kill the principal applicant if she did not put a stop to her investigation and that she would end up like her father and uncle. These calls were the cause of the principal applicant, her husband and their first son moving in September 2008.

[9] The principal applicant alleges that her stepmother and her new husband have ties to the cartel. She reports that her stepmother advised her to end her investigation into her father's murder.

[10] In November 2012, the applicants moved a second time. According to the applicants, the threats continued. In June 2016, the principal applicant believed she was being followed by a vehicle driven by her stepmother and her spouse. In November 2016, the applicants moved a third time and again a fourth time in November 2017 to Mexico City. The applicants allege that they appeared before the "National Human Rights Commission", and the Commission recommended that they leave the country.

III. Applicable standard of review

[11] The parties contend that the standard of review applicable to the issues identified is reasonableness. I agree.

[12] A reasonable decision has several hallmarks, such as justification, transparency and intelligibility (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]). Moreover, a reasonable 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).

IV. Extension of time

[13] The applicants are also asking that the Court grant an extension of time to file and serve the application for leave. The respondent has not taken a position on the application. Considering the lack of opposition and the principal applicant's affidavit, I am satisfied that the applicants had a continuing intention to pursue their application for judicial review, that the application for judicial review deserves consideration, that there is a reasonable explanation for the delay, and that an extension of time will not prejudice the respondent (*Huot v Canada (Citizenship and Immigration)*, 2010 FC 973 at para 14). The application for an extension of time is allowed.

V. Analysis

A. *The RPD's credibility findings were reasonable*

[14] In rejecting the applicants' refugee protection claims, the RPD described four omissions from which it drew negative inferences:

- A. During her testimony, the principal applicant stated that in September 2010, her stepmother confessed to her that she had killed the principal applicant's father and had caused him great pain. This allegation was not included in the BOC form.
- B. During her testimony, the principal applicant stated that she received threatening telephone calls between November 2016 and April 2017. The BOC form did not include a description of telephone threats between those dates.

- C. The applicant testified that during the 10 months that the principal applicant and her family lived in Mexico City prior to their arrival in Canada, her stepmother and her spouse visited her sister and inquired as to her whereabouts. This information was not in the BOC form.

- D. The principal applicant's husband testified that during the months he lived in Mexico City, a number of individuals visited his mother and asked her if she knew where to find the principal applicant. This information was not in the BOC form.

[15] The RPD inquired as to the reasons for these omissions. The female applicant explained that much of the information had to be deleted when she wrote her story, including her stepmother's confession about her father's murder. She explained that information related to the threats between November 2016 and April 2017 was removed from the BOC form by her counsel. Similarly, she added that there was too much detail in the BOC form and that she and her counsel had to remove some of the information, including the visit of the principal applicant's stepmother and her spouse to the principal applicant's sister's home. The principal applicant's husband provided a similar explanation for omitting the individuals who visited his mother's house in search of the principal applicant.

[16] The RPD rejected these explanations, noting that (1) the BOC form specifically requests that each applicant explain "in detail" what happened to each of them; and (2) the applicants were represented by counsel who should have known that such relevant information was important and should have been included. The RPD found that the omissions, in and of

themselves, would not necessarily be sufficient to taint the credibility of the applicants, but the accumulation of these omissions seriously tainted the credibility of the allegations of threats and of individuals trying to track down the principal applicant.

[17] The applicants argue that the RPD erred by unreasonably focusing on omissions and inconsistencies that were not central to the claim and ignoring the real central aspects. I disagree.

[18] The RPD may draw a negative inference from the omission of an element that is central to the claim for refugee protection (*Fahim v Canada (Citizenship and Immigration)*, 2015 FC 406 at para 16). It was not unreasonable for the RPD to have concluded that the omissions as to the father's murder, the threats and the efforts of the stepmother and her spouse to locate the principal applicant were omissions of key elements of the claim.

[19] The applicants allege that the RPD erred in finding that the principal applicant failed to include the stepmother's admission and that this error resulted in the negative treatment of the remaining evidence. In making this argument, the applicants do not dispute that the principal applicant's account does not report that the stepmother killed the father, but they argue that the content of the evidence supports that conclusion. This argument merely reflects disagreement with the RPD's conclusion, when that conclusion was reasonably reached by the RPD. Similarly, I find no merit in the argument that the negative finding with respect to this omission affected the RPD's consideration of the other elements.

[20] The applicants challenge each of the negative credibility findings made by the RPD. However, again, the arguments advanced reflect disagreement with the RPD, which is not sufficient to demonstrate that the RPD committed an error that would warrant the Court's intervention.

[21] The RPD is entitled to make a negative finding based on cumulative credibility concerns (*Lawal v Canada (Citizenship and Immigration)*, 2010 FC 558 at para 19 [*Lawal*]). While a decision-maker may err if negative inferences are drawn after a microscopic analysis of the evidence, that is not the case here. The omissions and inconsistencies that the RPD found had not been reasonably explained were at the heart of the claim for refugee protection.

B. *The RPD did not err in its consideration of the documentary evidence*

[22] The applicants claim that the RPD erred in law by basing its analysis of the documentary evidence on credibility issues rather than examining the evidence one exhibit at a time.

[23] The RPD examined the death certificate of the principal applicant's father, the newspaper article indicating that he was found burned to death, the marriage and divorce certificates of the father and stepmother, the letter from the principal applicant's lawyer in Mexico, and the evidence of changes in residence in Mexico. The RPD explained why each of these items was insufficient to overcome the credibility issues or to establish that the applicants were persons in need of protection.

[24] The RPD did not question the fact that the father is deceased and was killed, or the fact that he was divorced from the principal applicant's stepmother. However, in considering the applicants' credibility issues, the RPD found that these events could not be linked to the applicants' fears.

[25] In fact, the RPD considered this evidence, but gave it little weight because of credibility issues. That is not a reviewable error. The case law establishes that an applicant's lack of credibility can be extended to all documentary evidence that the applicant submitted to corroborate the applicant's version of the facts (*Lawal* at para 22).

VI. Conclusion

[26] The application for judicial review is dismissed. There is no question of general importance to certify.

JUDGMENT in IMM-2218-20

THIS COURT'S JUDGMENT is as follows:

1. The application for an extension of time is allowed;
2. The application for judicial review is dismissed; and
3. No question is certified.

“Patrick Gleeson”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2218-20

STYLE OF CAUSE: MARIA DE LOURDES ROMERO GOMEZ, JORGE BUSTILLOS ARAIZA, ANA CAMILA BUSTILLOS ROMERO, JORGE ENRIQUE BUSTILLOS ROMERO, ALEJANDRO BUSTILLOS ROMERO v THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: VIA VIDEOCONFERENCE

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JUDGMENT AND REASONS: GLEESON J.

DATED: NOVEMBER 18, 2021

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