

Federal Court



Cour fédérale

Date: 20211209

Docket: IMM-785-21

Citation: 2021 FC 1383

[ENGLISH TRANSLATION]

Ottawa, Ontario, December 9, 2021

PRESENT: Madam Justice Walker

BETWEEN:

CRISTIAN OSPINA CIRO

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The applicant is a citizen of Colombia. He is seeking judicial review of a decision of the Refugee Appeal Division (“RAD”) dated December 24, 2020 (“Decision”), rejecting his claim for refugee protection. Like the Refugee Protection Division (“RPD”), the RAD found that the applicant was not credible as a result of the multiple inconsistencies and omissions noted in his

testimony, in the documents he filed into evidence, and in the immigration forms he completed at a Canadian port of entry.

[2] For the reasons that follow, the application is dismissed. The RAD conducted a comprehensive review of the applicant's arguments, the specific facts of the case, and the evidence adduced. I conclude that it was open to the RAD to uphold the RPD's decision. The RAD's analysis of the inconsistencies and omissions that undermined the credibility of the applicant's narrative was internally coherent and rational according to the framework established in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (*Vavilov*).

I. Background

[3] The applicant fears that if he returns to Colombia, he will be subject to serious harm by three men who attempted to recruit him in 2016 to collect extortion payments.

[4] Following this precipitating incident in August 2016, the applicant alleged that he left the family residence in Villavicencio and that he went to live with his uncle in Medellín until February 2018. The applicant returned to Villavicencio in February 2018, and, in March 2018, the same armed men returned to the family home to tell him that the offer was still on the table.

[5] The applicant went into hiding at friends' homes before visiting his mother on April 11, 2018, to notify her that he would be leaving the country. When he left the house, two men attempted to assault him and shot at the house. The police went to the residence and advised the applicant to file a complaint with the Prosecutor's Office (*Fiscalia*), which he did.

[6] The applicant traveled to the United States on April 29, 2018, and crossed the Canada–U.S. border on April 30, 2018. He immediately claimed refugee protection.

[7] The RPD rejected the applicant’s refugee protection claim in a decision dated August 2, 2019. The RPD found that the applicant was not credible as a result of the multiple inconsistencies and omissions between his testimony at the hearing and the evidence in the record. The RPD pointed out the following contradictions:

- (a) The applicant testified that he moved in with his uncle in Medellín and worked there, but in the applicant’s Appendix A, one of the immigration forms completed upon his entry into Canada, there is no mention of his stay in Medellín;
- (b) There are several inconsistencies and omissions in the evidence regarding the dates in April 2018 on which the applicant went to say goodbye to his mother and on which he alleges that he filed a complaint with the Prosecutor’s Office involving the men who had attempted to recruit him;
- (c) The applicant’s failure to mention, in his written narrative, a threatening phone call that he described in his complaint filed with the Prosecutor’s Office; and
- (d) The applicant’s failure to mention a second cousin who had been killed in circumstances similar to those alleged by him.

[8] The RAD dismissed the applicant’s appeal of the RPD’s decision. It is the RAD’s Decision that is the subject of this application for judicial review.

[9] The RAD found that the RPD had not erred in its finding that the applicant was neither a Convention refugee nor a person in need of protection, as the applicant’s account of the events that led him to leave Colombia was not credible. The RAD based its decision on three negative credibility findings.

[10] First, the RAD was not satisfied that the RPD had breached the applicant's right to procedural fairness by finding that his credibility was undermined by inconsistencies between his immigration forms on the one hand and his written narrative and testimony on the other. The RAD considered that the explanations provided by the applicant and his counsel for the omission of all details of his stay in Medellín in his Appendix A were unsatisfactory. In addition, the RAD also did not accept the argument that the applicant's former counsel erred in failing to correct Appendix A, given that the new counsel did not take steps to make allegations of inadequate representation.

[11] Second, the RAD considered the inconsistent evidence regarding the applicant's complaint filed with the Prosecutor's Office and his visit to his mother just before he left Colombia. It confirmed the RPD's adverse findings about the applicant's credibility arising from this aspect of his evidence.

[12] Finally, the RAD noted that the applicant failed to challenge the RPD's finding as to his credibility as a result of his failure to mention a threatening phone call that he had reported in his complaint filed with the Prosecutor's Office. The RAD simply indicated that it agreed with the finding for the reasons set out by the RPD.

II. Analysis

[13] The applicant's core argument in his challenge of the Decision is essentially that each stage of the process of his refugee claim was seriously undermined by breaches of procedural fairness. The applicant's primary criticism was aimed at the border services officer who failed to

ensure that the applicant was provided with a Spanish interpreter. The applicant noted that the inconsistencies and omissions identified by the RPD and the RAD were largely due to the discrepancies between the immigration forms completed by the applicant without an interpreter upon arrival in Canada and his testimony at the RPD hearing. It would therefore follow that the RAD's Decision, based on said inconsistencies and omissions, was unreasonable.

[14] The RAD's findings on credibility and the assessment of the evidence must be reviewed on a standard of reasonableness (*Vavilov* at paragraphs 10, 23; *Zamor v Canada (Citizenship and Immigration)*, 2021 FC 672 at para 6). Where the standard of reasonableness applies, the Court shall review "the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome" to determine whether the decision is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at paras 83, 85).

[15] In contrast to the applicant's arguments, I am of the view that the absence of an interpreter when the applicant completed Appendix A with the help of the Border Services officer does not call into question the RAD's entire rationale. The RAD addressed the same arguments, and its reasons for dismissing them were detailed and reasonable.

[16] The RAD undertook an independent analysis of the RPD's decision in light of the applicant's appeal arguments. With respect to the inconsistency identified by the RPD in the evidence concerning the applicant's life and work in Medellín, the RAD did not accept the

argument that the RPD had breached the applicant's right to procedural fairness by relying on those inconsistencies.

[17] According to the applicant's immigration form, he had lived in the same city as his family (Villavicencio) from May 2013 to May 2018. He was unemployed from April 2016 to October 2017 and had worked as a butcher in Villavicencio from October 2017 to April 2018. However, in his written narrative and testimony, the applicant stated that he had fled his hometown in August 2016 after the first recruitment incident and that he had left to live with his uncle in Medellín, where he had worked for a year and a half. At the RPD hearing, the applicant and his counsel provided different explanations for this contradiction, but the RAD rejected both explanations. Notwithstanding that the applicant's English was not perfect, he apparently noticed that there was no mention of the city of Medellín on the form although he had provided this information to the officer, given that the other answers to the questions concerning addresses and employment indicated the name of his hometown. The RAD noted that the RPD and the RAD should be cautious when they give weight to immigration forms signed at the port of entry, but noted the following:

It is important to note that this is not a situation in which a claimant alleges that they told a border agent one thing, but it simply does not appear on their immigration form. In this case, the border agent would have had to fabricate the information about Mr. Ospina Ciro's first being unemployed and then working as a butcher in Villavicencio during the period of time he claimed to have fled that town to live and work in Medellín.

[18] The RAD did not find it credible, on a balance of probabilities, that such a fabrication had occurred, either as a result of interpretation problems or any other reason.

[19] I agree with that conclusion. The applicant failed to identify a reviewable error in the RAD's reasons. The applicant's arguments ignored the RAD's analysis and specific reasons. The RAD's explanation demonstrated an internally coherent and rational analysis. In my view, the explanation provided a convincing justification for the merits of the RAD's finding rejecting the applicant's arguments that a breach of procedural fairness had occurred.

[20] The RAD then provided two additional grounds to justify its adverse finding on the applicant's credibility.

[21] The RAD reviewed the contradictions surrounding the complaint that the applicant claimed to have filed with the Prosecutor's Office and the date of the applicant's visit to his mother. The RPD made an adverse finding as a result of the inconsistencies between the applicant's testimony and his written narrative regarding the date on which he went to say goodbye to his mother and his failure to mention in his narrative that he had filed a complaint and that he had left a copy of the complaint with his mother.

[22] I agree with the RAD's finding that the inconsistencies identified by the RPD were not simply minor or peripheral. Rather, they concern the period before the applicant's departure from Colombia and the credibility of the complaint filed with the Prosecutor's Office.

[23] The applicant claimed on appeal that the RPD had erred with respect to his failure to mention in his written narrative that he had filed a complaint with the Prosecutor's Office. He alleged that it was sufficient for him to have stated in his narrative "that the police told him to

file a complaint with the prosecutor” and that he had done so. The RAD rejected that argument. The problem with the applicant’s testimony in this regard was that the changes made to his testimony had resulted in inconsistencies with other parts of his narrative. Those additional inconsistencies forced the applicant to further change his testimony. In addition, the RAD disagreed with the applicant’s counsel that the failure to mention that he had left a copy of the complaint with his mother was a minor error. That failure must be considered in the context of the related findings concerning the applicant’s explanations in his testimony as to the date on which he went to say goodbye to his mother prior to his departure from Colombia.

[24] Finally, the RAD noted the applicant’s failure to include in his evidence a threatening phone call referred to in his complaint to the Prosecutor’s Office. The RPD made a negative inference as to his credibility as a result of this failure, and the applicant did not challenge the RPD’s analysis. The RAD reasonably concurred with that analysis for the reasons set out in the RPD’s decision.

[25] In summary, the RAD found that the inconsistencies and omissions between the evidence and the applicant’s testimony were not minor issues. I agree with the RAD’s reasons. The inconsistencies and omissions identified involved fundamental issues sufficient to rebut the presumption of truthfulness of the applicant’s testimony. The RAD addressed the applicant’s arguments alleging the breach of his right to procedural fairness by the Border Services officer and by his former counsel in a transparent and detailed manner. The applicant’s arguments based on breaches of procedural fairness and interpretation issues were not convincing and did not undermine the RAD’s rigorous and meticulous analysis.

[26] Accordingly, this application for judicial review is dismissed.

[27] The parties have not proposed any questions for certification, and I agree that there are none.

JUDGMENT in IMM-785-21

THIS COURT'S JUDGMENT is as follows:

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

“Elizabeth Walker”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-785-21

STYLE OF CAUSE: CRISTIAN OSPINA CIRO v THE MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: NOVEMBER 23, 2021

JUDGMENT AND REASONS: WALKER J.

DATED: DECEMBER 9, 2021

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