

Federal Court



Cour fédérale

Date: 20220310

Docket: IMM-3203-20

Citation: 2022 FC 326

Ottawa, Ontario, March 10, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

**JOSE DE JESUS MOCTEZUMA
MARTINEZ**

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a citizen of Mexico, seeks review of the Refugee Protection Division (RPD) decision, dated June 23, 2020, which found that he was not a Convention refugee nor person in need of protection. The RPD determined that there was “no credible basis” to his refugee claim based upon s 107(2) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[2] For the reasons that follow, this judicial review is dismissed. The Applicant has not established any errors with the RPD decision and I have concluded that the RPD decision is reasonable.

I. Background

[3] The Applicant came to Canada in September 2018 and sought refugee protection, claiming a fear of persecution from his former spouse, Iris, and an organized crime group, Los Salazares.

[4] The Applicant claimed that his spouse smuggled family members across the border between Mexico and the United States (US), which drew the attention of the Los Salazares, who controlled the area. When he told her that he would not help her smuggle people across the border, he claims she threatened him with a knife and arranged to have him killed.

[5] The Applicant relocated to several areas of Mexico before entering Canada.

A. *RPD Decision*

[6] The RPD noted that the Applicant's testimony was "confusing, contradictory and at times implausible" and concluded that the Applicant was not credible.

[7] The RPD noted that the Applicant's testimony differed from the narrative in his Basis of Claim (BOC) form. For example, the Applicant provided an amended BOC form in which he

stated that he stayed in Nayarit from May 2016 (instead of 2017, as initially claimed) until September 2018. However, during his testimony, he stated he stayed in Nayarit for a year and a half. When the RPD attempted to clarify the contradiction, the Applicant alleged his spouse had given him medication which impacted his ability to remember details – an allegation that was not mentioned in his BOC. The RPD noted that this explanation was not supported by any medical documentation.

[8] The RPD found his claim that his spouse was smuggling relatives across the border without documentation was implausible particularly given the political climate in the US at that time. In addition, the RPD drew a number of adverse inferences based upon the following:

- the Applicant's testimony that he reported his spouse's illegal activities to Immigration Authorities, despite providing no evidence of this and telling CBSA authorities that he did not;
- the Applicant's explanation that he was relying on his spouse to arrange a smuggler to take him to the US, when he also alleged that his spouse had arranged to have him killed;
- the Applicant's testimony that his spouse was first a target of the cartel, yet later the cartel wanted her to work with them;
- the Applicant's failure to make reasonable efforts to obtain documentation to corroborate his claim.

[9] The RPD also determined that the Applicant's documentary evidence, including letters from friends and his ex-wife, Maelene, were not probative, did not substantiate the Applicant's allegations, and, in some instances, were merely a recitation of what the author was told by the Applicant.

[10] The RPD denied the Applicant's claim for refugee protection, finding no credible basis for the claim pursuant to s 107(2) of the IRPA.

II. Issue and Standard of Review

[11] The issue that arises is whether the RPD's credibility and the "no credible basis" findings are reasonable.

[12] The parties agree that the standard of review is reasonableness as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

[13] *Vavilov* instructs that "[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" (at para 99).

III. Analysis

A. *Negative Credibility Findings*

[14] The Applicant argues the RPD erred in making negative credibility findings against him.

[15] The Applicant argues that it was unreasonable for the RPD to find it implausible that Iris (his ex-spouse) drugged him and it was unreasonable for the RPD to expect the Applicant to

have the foresight to gather medical evidence, such as a blood or urine test to substantiate this claim. However, when these statements of the RPD are considered in context, it is clear that they are made in direct response to the Applicant's version of events. He claimed to be unable to remember key details going to the core of his claim because his memory had been affected by the drugs he was given. He says that Iris is a nurse so it is plausible that she would have access to medications. In relying upon this as an explanation for his memory defects, it was reasonable for the RPD to look for confirmatory evidence. Furthermore, the Applicant made no reference to this allegation in his BOC. In my view, it was reasonable for the RPD to look for other evidence to substantiate this claim.

[16] The Applicant also challenges the RPD finding that it was implausible for Iris to be able to smuggle relatives across the US border. Related to this, he claims that the RPD unreasonably expected him to explain the mechanics of the smuggling operations. This, however, is not an accurate articulation of how the RPD addressed this issue. The smuggling activities raised by the Applicant form a core part of his claim for refugee protection. Specifically, his claim is that when he refused to help Iris with her smuggling operations, she threatened his life. The Applicant also claimed that he reported Iris' illegal activities to the authorities. However, the RPD noted that the Applicant did not make any mention of the disclosure of the smuggling activities to authorities in his BOC or to Canada Border Services Agency.

[17] Related to this issue, the Applicant claims that his ex-wife, Maelene, assisted him in reporting Iris' activities to the authorities; however, the letter from Maelene filed in support of his refugee claim makes no mention of this fact.

[18] The RPD noted that the Applicant did not make reasonable efforts to get corroborating evidence, such as messages written by Iris that she was going to have him killed, or letters from his family members who allegedly saw these messages. In this context, it was reasonable for the RPD to expect the Applicant to provide corroborating evidence, and it was reasonable for the RPD to make adverse credibility inferences against the Applicant in the absence of such evidence.

[19] As noted in *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924 [*Lawani*], while refugee applicants are presumed to tell the truth, this can be rebutted by an applicant's lack of credibility. Contradictions, inconsistencies, and omissions can support a negative finding of credibility (*Lawani* at para 22). The RPD is also entitled to draw conclusions based on "implausibilities, common sense and rationality" so long as the implausibility findings are "rational, sensitive to cultural differences and clearly expressed" (at para 26).

[20] Overall, the Applicant failed to mention crucial elements of the claim in his BOC, he gave contradictory and vague testimony, and failed to provide corroborating evidence. The RPD's finding that the Applicant was not credible and that aspects of his claim were implausible is reasonable.

B. *No Credible Basis Finding*

[21] The Applicant argues the RPD failed to properly assess the evidence in arriving at a "no credible basis" finding. He argues that his profile and the country conditions evidence support the plausibility of his claim.

[22] A finding of “no credible basis” may only be made if there is no credible or trustworthy evidence on which the RPD could have upheld the claim (*Rahaman v Canada (Minister of Citizenship and Immigration)*, 2002 FCA 89 at para 28 [*Rahaman*]).

[23] Here, the RPD considered the country conditions evidence that indicated that the Los Salazares are linked to the Sinaloa Cartel who maintain control of drug and migrant trafficking routes. The evidence also indicated that the group is active in Nogales, where the Applicant lived. However, the general information about the group – without credible evidence specifically linking the Applicant to the group – was not sufficient to support a claim for refugee protection.

[24] This is the type of circumstance outlined by the Federal Court of Appeal in *Rahaman* where such a finding is appropriate:

[...] the claimant's oral testimony will often be the only evidence linking the claimant to the alleged persecution and, in such cases, if the claimant is not found to be credible, there will be no credible or trustworthy evidence to support the claim. Because they are not claimant-specific, country reports alone are normally not a sufficient basis on which the Board can uphold a claim (at para 29).

[25] Accordingly, the country conditions evidence alone is not sufficient to establish the Applicant’s refugee claim when his own direct evidence was found not credible. The finding of no credible basis to the Applicant’s refugee claim is reasonable.

[26] Therefore, this judicial review is dismissed.

[27] Neither party proposed a certified question and no question is certified.

JUDGMENT IN IMM-3203-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No question is certified under paragraph 74(*d*) of the IRPA.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-3203-20

STYLE OF CAUSE: MARTINEZ v MCI

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 18, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: MARCH 10, 2022

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