Federal Court  Cour fédérale

Date: 20220316

Docket: IMM-935-20

Citation: 2022 FC 355

Toronto, Ontario, March 16, 2022

PRESENT: Justice Andrew D. Little

BETWEEN:

CESAR AUGUSTO MORENO AGUDELO

Applicant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] In this application for judicial review, the applicant seeks to set aside a decision dated January 14, 2020, made by a panel of the Refugee Protection Division (the "RPD") under section 96 and subsection 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (the "IRPA").

[2] The applicant submitted that the simultaneous translation at the RPD hearing was inadequate and constituted a breach of procedural fairness. In addition, the applicant argued that the RPD panel made many errors in its reasons, which render its decision unreasonable based on the principles in *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[3] For the reasons detailed below, the application is dismissed.

I. Facts and Events Leading to this Application

[4] The applicant is a citizen of Colombia. He lived in Medellin. Beginning in April 2011, the applicant volunteered with a non-profit organization that provided health products and services to poor and rural areas of Colombia. The organization worked principally in two particular regions in Colombia.

[5] The applicant claimed that he was targeted by *Los Urabeños*, also known as *Autodefensas Gaitanistas de Colombia* or AGC. It is an armed group that is part of the Gulf clan, said to be the most powerful criminal organization in Colombia. The applicant claims that initially, the Urabeños threatened to kill him if he ever returned to one of the regions in which the non-profit organization worked.

[6] The applicant ignored the threats at the beginning, because he was mostly working in the other region. In November 2012, the applicant was attacked when six members of the Urabeños stopped his vehicle. They damaged his vehicle and stole his belongings, money and some medicine that was intended for distribution.

[7] This incident caused the applicant to stop working for the non-profit for a time. He returned to his work in April 2013 but a month later, in May 2013, a member of Urabeños in uniform attacked the applicant from behind with a knife. The uniformed man gave the applicant six months to leave the country or risk being declared a “military target” against whom punishment would be enforced.

[8] The applicant decided to leave for Canada and applied for a temporary resident visa. It was granted on July 26, 2013.

[9] On September 18, 2013, the applicant arrived in Canada.

[10] In 2015, the applicant met Carolina Orjuela Osorio. They married in 2016. In 2017, he applied for permanent residence with the sponsorship of his then-spouse. Unfortunately, the marriage failed in late July 2018.

[11] On August 16, 2018, the applicant’s spouse withdrew her sponsorship of his application for permanent residence.

[12] By letter dated August 21, 2018, Immigration, Refugees and Citizenship Canada (“IRCC”) advised the applicant that he must leave Canada within 30 days.

[13] On September 17, 2018, the applicant submitted a refugee protection claim.

II. The Decision under Review

[14] By decision dated January 16, 2020, a three-member panel of the RPD refused the applicant's claim for protection under section 96 and subsection 97(1) of the *IRPA*.

[15] The determinative issue was credibility. In addition, the panel determined that there was no credible or trustworthy evidence on which a favourable decision could have been made. The panel therefore found that there was no credible basis for the applicant's claim under subsection 107(2) of the *IRPA*.

[16] The RPD identified ten concerns that negatively affected the applicant's credibility:

a) the panel found that there was "clear evidence of a misrepresentation of a central element of his sponsorship", namely, that he was still married to his spouse. Although his former spouse had left the marital home and declared that the marriage was over on July 28, 2018, the applicant still paid the online sponsorship fee on August 20, 2018. The panel stated that the applicant "was effectively holding himself out to Canadian immigration officials as an applicant continuing in a genuine marriage to a Canadian permanent resident, when that was clearly not the case and he knew it was untrue".

b) The applicant claimed that while in Colombia, he carried a letter with him, in his briefcase, from the only work colleague who was aware of the threats and attacks on him by the Urabeños. The applicant explained that this letter was designed to show other Urabeños members that he had stopped working for the non-profit

organization, to ward off any future harassment or attack. However, in the panel's view, the claimant's explanation about the reason he obtained this letter strained credulity and undermined his general credibility. Given his alleged history of violent problems prior to June 2013, the panel did not find it credible that the applicant would think that a letter carried in his briefcase would be of any value in warding off any future attack from the Urabeños – a paramilitary group would not provide him time to reach into his briefcase to produce the letter. The applicant's explanation called into question the providence and genuineness of the letter. The panel found it could attach no weight to the letter and was not convinced that it was genuine. Instead, the panel found that the letter had been "procured solely to support a fraudulent refugee protection claim".

c) The applicant did not adduce credible evidence to explain his delay in leaving Colombia in 2013. The delay was approximately four months between the last incident with the alleged agents of persecution in May 2013 until the applicant left Colombia on September 19, 2013. The panel concluded that the applicant omitted any attempt to address his delay in his Basis of Claim form despite specific instructions to do so in that form.

d) The applicant failed to provide a reasonable explanation for his five-year delay in applying for refugee protection in Canada. The applicant testified that his initial delay was due to peace talks in Colombia, but the RPD panel found that the Urabeños were not involved in those peace talks. The panel concluded that delay can undermine both subjective fear and credibility if a refugee claimant does not

give a reasonable explanation for the delay in making the claim after arrival in Canada and out of the country of persecution. The panel found that the applicant's delay had undermined both in this case.

e) The panel found that there were major omissions in the applicant's description of an incident in May 2013. The panel compared the account in the applicant's Basis of Claim narrative with his oral testimony, finding that the testimony "differed remarkably" from the narrative. In his testimony, he described how he was attacked from behind with a knife, which has not been mentioned in the narrative. The panel found the applicant's answer to questions about the omission in the narrative to be evasive, unsatisfactory and unreasonable and that the narrative itself was vague with respect to details regarding the attack. The panel found that if the applicant had been stabbed or slashed with a knife, it would be an important aspect of the assault and a specific example of potentially life-threatening persecution by the Urabeños.

f) The applicant's description of the November 2012 attack by the Urabeños against him in his Basis of Claim form lacked pertinent details that would otherwise have illustrated the degree of risk to the claimant, including the number of gang members and the fact that they were armed with assault rifles. The applicant had no corroboration of the alleged damage to his vehicle during the attack.

g) The RPD panel noted the "remarkable coincidence of timing" of a renewed threat by the Urabeños. According to the applicant, his family members warned him that

the Urabeños were still looking for him in September 2018, shortly after IRCC told him to leave Canada. The RPD noted that the nub of the applicant's present fear of return to Colombia was that the Urabeños, suddenly and for no apparent reason after a five-year hiatus while the claimant was in Canada, came looking for him and that this only came to his attention in the weeks immediately following the issuance of a letter by Canadian immigration officials telling him to leave Canada. The panel did not believe the applicant's testimony attempting to explain.

h) The applicant provided inconsistent evidence about his involvement in a charitable organization.

i) The applicant's disclosure included photographs of him with his father and volunteers from the charitable organization. However, the applicant's Basis of Claim stated that his father died in February 2008 and that the applicant only became a volunteer for the organization starting in April 2011, well after his father's death.

j) The panel concluded that the Urabeños did not have, and never had, any interest in the applicant. In light of the numerous and significant credibility concerns, the panel provided little or no weight to the other supporting documentation filed by the applicant. The panel found that two letters filed by the applicant were not written independently or without specific direction from the applicant.

[17] The panel therefore did not find the applicant to be a credible witness and simply did not "believe his allegations about problems with the Urabeños in Colombia, or that he was actively involved in" the charitable organization as he claimed. The panel further found that the applicant had failed to adduce sufficient credible and trustworthy evidence about his claim to convince it that any of the events happened as alleged.

[18] Given the panel's general finding of a lack of credibility, the panel concluded that the applicant was neither a Convention refugee nor a person in need of protection action under the *IRPA*.

[19] The RPD therefore dismissed his claim for *IRPA* protection.

III. The Parties' Overall Positions

[20] The applicant raised two principal issues. First, he argued that there were many errors in the simultaneous translation between Spanish and English during the hearing in his submission, and that the poor quality of the translation led to a breach of his right to procedural fairness.

[21] Second, the applicant submitted that the RPD's decision was unreasonable owing to numerous errors of law and in the RPD's assessment of the evidence.

[22] The respondent's position was that the applicant should have raised issues about alleged mistranslations at the hearing before the RPD and that by failing to do so, he waived any procedural unfairness. In any event, the respondent submitted that the translation errors were minor and did not lead to erroneous conclusions about the applicant's credibility or on the

evidence. The respondent argued that, in law, the translation was not required to be perfect and that there was a linguistic understanding between the applicant and the RPD.

[23] On the reasonableness of the RPD's decision, the respondent submitted that the determinative issue was credibility and that the RPD's credibility findings were responsive to the evidence.

IV. Analysis

A. *Was the translation at the RPD hearing inadequate?*

(1) Rules and Legal Principles

[24] If a refugee claimant does not understand English or French, proper interpretation is an element of a procedurally fair hearing before the RPD. If inadequate translation deprives a refugee claimant of sufficient understanding of the proceeding, the claimant may not be able to participate in the hearing by presenting the claim for *IRPA* protection and answering questions from the panel at the hearing.

[25] Rule 19 of the *Refugee Protection Division Rules*, SOR/2012-256, provides for interpretation in an RPD proceeding. If a refugee claimant or a protected person needs an interpreter for the proceedings, the person must raise it and specify the language and dialect, if any, to be interpreted: *Refugee Protection Division Rules*, rules 19(1) and (3).

[26] The Federal Court of Appeal held in *Mohammadian* that interpretation services provided to refugee claimants must "be continuous, precise, competent, impartial and contemporaneous":

Mohammadian v Canada (Minister of Citizenship and Immigration), 2001 FCA 191, [2001] 4 FC 85, at para 4.

[27] If interpretation is required at a hearing, it must be adequate, but need not rise to a standard of perfection or flawlessness: *Mohammadian,* at para 6*; Singh v Canada (Citizenship and Immigration)*, 2010 FC 1161, at para 3; *Bouanga v Canada (Citizenship and Immigration)*, 2014 FC 1029, at para 8 and 10-11; *Jovinda v Canada (Citizenship and Immigration)*, 2016 FC 1297, at paras 27 and 32-35; *Paulo v Canada (Citizenship and Immigration)*, 2020 FC 990, at paras 28-29. Sourced in section 14 of the *Canadian Charter of Rights and Freedoms*, the fundamental value to be served is linguistic understanding. The purpose is to create a level and fair playing field, not to provide some individuals unfair advantages or more rights than others: R v Tran, [1994] 2 SCR 951, at pp. 977-978; *Mohammadian*, at paras 6 and 16.

[28] A refugee claimant alleging inadequate translation is not required to demonstrate actual prejudice: *Mohammadian,* at para 4. However, the applicant must show that the interpretation errors were consequential (i.e., they must be real, significant, serious or non-trivial), connected to the decision maker's findings, and related to the applicant's ability to answer questions or present the refugee claim: *Paulo*, at paras 28-29, 33 and 41; *XY v Canada (Citizenship and Immigration)*, 2020 FC 39, at paras 32-33; *Gebremedhin v Canada (Immigration, Refugees and Citizenship)*, 2017 FC 497, at para 14. In *Paulo*, Justice Gascon addressed the relationship between the errors and the decision maker's findings:

> [29] Regarding the significance of errors, the standard requires that translation or interpretation errors influence "the heart of the RPD's decision", "[give] rise to one or more of the determinative findings" and "affect a central aspect of the RPD's conclusions" to

> lead the Court to find that a deficient translation is a breach of procedural fairness […]. Thus, according to several decisions of this Court, the translation error "must be material to the [decision maker's] credibility findings" […]. For others, it is not necessary to show that the translation error was material to the decision maker, but merely to establish that the error itself was real and significant […]. However, "once an applicant establishes that there was a real and significant translation error, he or she is not required to also demonstrate that the error underpinned a key finding before the RPD decision can be set aside" [emphasis added] […]. In sum, the translation error must not be immaterial, insignificant or inconsequential.
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> [Internal citations omitted.]

[29] Finally, concerns with the interpretation must be raised at the first opportunity: *Mohammadian*, at para 13; *Singh*, at para 3; *Jovinda*, at paras 28-31. This requirement is consistent with general principles about procedural fairness: *Kozak v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 124, [2006] 4 FCR 377, at para 66; *Hennessey v Canada*, 2016 FCA 180, at para 20; *Canadian National Railway Company v Canada (Transportation Agency)*, 2021 FCA 173, at para 68.

[30] These principles about interpretation errors have been confirmed recently in *Sidhu v Canada (Citizenship and Immigration)*, 2022 FC 56, at para 35 and 38; and *Caneo v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 748, at paras 22-24.

(2) The Present Case

[31] I will not deal with the respondent's submission that the applicant should have raised the issues about the translation at the hearing before the RPD. I prefer to resolve this application by addressing the interpretation issues raised by the applicant on their merits.

[32] On this application, the applicant filed an affidavit from an interpreter (who was not the interpreter at the hearing) who translated certain exchanges at the RPD hearing amongst the applicant, his consultant, the hearing interpreter and (in most cases) a member of the RPD panel. The affidavit provided corrections to the hearing interpreter's Spanish-English and English-Spanish contemporaneous translations. The applicant submitted that the errors in translation during the hearing breached procedural fairness by creating contradictions and confusion, which led to the RPD's impression that his testimony was vague and inconsistent.

[33] At the hearing in this Court, the applicant advised that the translation errors affected his ability to testify in the best way possible to the RPD panel, so the panel did not believe his answers. He also argued that the panel did not believe the documents and letters he submitted because the panel did not believe him.

[34] I carefully reviewed the translations in the interpreter's affidavit. I also read the applicant's written submissions (to which someone with legal knowledge clearly contributed). I considered the applicant's own submissions at our hearing. I also considered the respondent's written and oral submissions.

[35] There are some preliminary points. First, the applicant alleged in his written memorandum that he does not speak English and was not in a position to realize that the interpreter's translations were incorrect. The applicant stated that he did not know he could stop the hearing to correct perceived translation errors. I accept that the applicant's first language is not English and that (as he submitted at our hearing) he had "problems" with English at the time.

However, it is not entirely accurate to say that he spoke no English and could not know that there were translation issues at the hearing. Even amongst the short excerpts of the hearing in the Application Record, there are examples when the applicant himself immediately intervened to address the translation. He intervened once to correct the translator (who said "2013" in English instead of "2018") and on another occasion to clarify an answer he gave that appears to have been ambiguous in the original Spanish.

[36] Second, the applicant's immigration consultant at the hearing spoke both English and Spanish, although the consultant advised that he is from a different country than the applicant. During the RPD hearing, the consultant raised translation issues and provided interpretations. At our hearing, the applicant advised that his 'lawyer' spoke Spanish as a first language as a native of Mexico, and had lots of clients from Colombia.

[37] Third, the applicant did not specify a dialect of Spanish (such as a dialect spoken in Colombia) when he filed his form for an interpreter at the RPD hearing under Rule 19 of the *Refugee Protection Division Rules*.

[38] I turn now to the translation errors identified in the applicant's materials.

[39] A number of the translation issues identified by the applicant were minor or were immediately corrected or clarified. As examples:

- The hearing interpreter had difficulty with *"desparacitar"* (delousing) and had to look in her dictionary.

- The panel asked the applicant how many volunteers worked at an organization and the interpreter translated "*uno o dos voluntarios*" as "some additional volunteers". The panel member asked again, "I asked how many?" and the applicant clarified *"dos"* or two.
- The interpreter used "in order to be" instead of "due to the fact", which was only corrected in the affidavit.

[40] Relatedly, the applicant submitted that some of these errors made him appear evasive or that he was avoiding the question posed to him. While that is possible, I cannot conclude that the errors were consequential based on the transcript excerpts. The applicant did not link this submission to any specific parts of the RPD's reasoning.

[41] Another submission from the applicant was that, at one point, the intonation provided by the interpreter when translating a phrase made a difference to the way it was understood during the hearing. He submitted that if the intonation had been different, it would have avoided further questions posed to him several minutes later. In my view, this submission is speculative. I also note that on this occasion, the interpreter misunderstood the applicant's testimony. He noticed and raised it immediately. The interpreter corrected the error at that time.

[42] The applicant took issue with the interpreter's translation of his statement *"Me ataco por la espalda"* as "Attacked me on my back" when it should have been "Attacked me from behind". He also raised issues about the translation concerning an attacker's weapon (something "pointy" and "short" rather than "sharp") and where he was cut. The applicant noted that the interpreter

translated a later statement in his testimony as “he could’ve cut me on my back” when in fact it should have been “he could cut me on my back”. That led to the panel asking: “Did he?” The applicant answered “a small cut about 6 cm long”, which led to the question: “I am sorry, did he cut you on your back Sr?” After apparently clarifying the applicant’s answer, the interpreter stated: “The attacker cut me on the back”. While we do not have a full transcript, these concerns occurred in the same general time frame of the hearing and appear to refer to the claimant’s testimony about an incident when he was attacked from behind by a member of the Urabeños.

[43] In my view, there are no procedural fairness issues arising from these minor errors. The RPD clearly understood the applicant’s testimony because its reasons stated that the applicant was “attacked from behind with no warning by a member of the group who slashed him with a knife leaving a 5-inch gash on his back” (RPD decision, at para 45).

[44] Later, the RPD stated (at para 79):

> The claimant was asked to describe the attack. He said that the man attacked him on his back with a knife. He said ‘He could have cut me on my back’. Then he said the attacker had cut him on his back, with a small knife in an upward motion on his lower back around the spine, leaving a cut which was about 5 inches long through the claimant’s shirt.

[45] While we do not have all of the transcript evidence on which the RPD based these statements, I do not find that the translation error in the verb tense (“could have cut” versus “could cut”) made any substantial difference to the RPD’s finding. The importance of the statement was, in any event, in the fact that the applicant did not mention the knife assault in his Basis of Claim narrative. It is true that the RPD found his testimony to be evasive, unsatisfactory

and unreasonable; its finding seems to be related to his answer to the specific question of why these details were not given in his Basis of Claim form. I note that there were also additional facts omitted from the Basis of Claim narrative in relation to the same incident.

[46] The applicant argued that a panel member became “a little bit angry” during one exchange at a perceived insult, which arose from the interpreter’s mistranslation of the words *tranquil* and *preguntas*. In response to a question from an RPD member, the applicant answered *“tranquil”* and then “*entiendo sus preguntas*” which the interpreter translated as “relax” and “I understand your problems”. The interpreter’s affidavit on this application translated those phrases respectively as “It’s ok” and “I understand your questions”.

[47] The transcript excerpts show that these two translation errors were immediately recognized and addressed. Both the hearing interpreter and the applicant’s immigration consultant intervened. The consultant stated that there was a “bad translation” and that the applicant testified, “I understand your questions”. With respect to *tranquil* being interpreted as “relax”, the interpreter immediately said: “I don't think he mentioned it insultingly” and the consultant said “No, no, no” (agreeing with the interpreter). Soon after, the interpreter said that it was not meant “defensively”. The consultant added: “It's meaning ‘non offence taken’” and moments later, “no offence taken”, which I understand to say that the applicant’s use of *tranquil* did not intend to offend the panel member.

[48] The applicant did not link this excerpt to any part of the RPD’s reasons or to specific findings. However, it is possible to do so. The exchange appears to have occurred during a part

of the hearing related to the timing of the applicant's refugee claim in 2018. Looking at the RPD's reasons, I conclude that the translation issues were not consequential or material to its findings on this issue. I will explain.

[49] In its reasons on the timing of that claim and the applicant's five-year delay in filing it after arriving in Canada, the RPD made several negative credibility findings against the applicant and concluded that he faced no threat from the Urabeños in Colombia. The RPD found that the applicant knew from IRCC correspondence that he would be unable to prolong his stay in Canada. The RPD described his testimony about his telephone conversations in September 2018 with his family in Colombia. He claimed that they told him he was still a "Military Target" who would be punished upon his return. The applicant testified about a discussion with his brother concerning a telephone call his brother had received. The applicant's BOC narrative did not mention the call to the brother and he could not recount any details about it, including the date the call occurred, despite two opportunities to do so at the hearing. The applicant also told the RPD that he did not think the date was important. The RPD found this was a further important omission from his BOC narrative and drew a further negative credibility inference from the lack of details.

[50] Then the RPD raised a key question: why would the Urabeños start looking for the applicant again in the second half of 2018 when there was no evidence of any interest in him between June 2013 and mid-2018? The RPD stated that the applicant provided an answer to that question but "did not attempt to address the panel's concern directly".

[51] The RPD stated:

> [116] The nub of the complainant's present fear of return to Colombia is that the Urabenos, suddenly and for no apparent reason after a five-year hiatus while the claimant was in Canada, came looking for him, and this only came to his attention in the weeks immediately following the issuance of a letter by Canadian immigration officials telling him to leave.
>
> [117] The panel asked the claimant if he had any further explanation, given the remarkable coincidence of timing, that the threat from the Urabenos was apparently dormant for five years then he learned it had returned within 30 days after he was told to leave the country by Canadian immigration officials following the aborted spousal sponsorship.
>
> [118] He replied that they had pronounced him to be a Military Target, and then during the time in Canada and the sponsorship by his wife that threat was still continuing and in force.
>
> [119] So, the panel asked, why had he not made his refugee claim if he thought the threat was still there? He replied that he was waiting for peace in Colombia. The panel is of the view that the claimant's answer that the "threat was still there" in Colombia throughout his time in Canada, was inconsistent with his earlier answers to justify the delay in claiming.
>
> [120] The panel finds that the claimant's above explanations were inconsistent, vague, lacking in detail and not forthcoming. The panel finds that the claimant did not reasonably explain why the Urabenos had a sudden renewed interest in him in 2018…

[52] As may be seen, the panel's analysis dealt with the timing of the applicant's claim for refugee protection in 2018 using the contents of the applicant's evidence – its inconsistencies, the omissions in the BOC narrative compared with his oral testimony, and the applicant's inability to explain the five-year gap in the Urabeños's interest in him until immediately after IRCC told him he could not stay in Canada. The RPD did not mention the translation errors or the exchange between the applicant, the interpreter, the consultant and the RPD member.

[53] In my view, the applicant has not demonstrated that the interpretation errors in the words *tranquil* and *preguntas,* or the exchanges emanating from them, were significant or consequential to the RPD's adverse credibility findings or its conclusions about the delay in making his 2018 refugee claim. These translation errors in themselves were not sufficient to undermine the RAD's adverse credibility findings in relation to the timing of his claim. I am not persuaded that the translation errors impaired his ability to make his refugee claim by telling his story to the RPD, or his ability to respond to its questions on this issue: see *XY*, at para 32; *Batres v Canada (Citizenship and Immigration)*, 2013 FC 981, at para 10.

[54] The applicant did not attempt to show how these interpretation errors affected the RPD's overall decision in light of the ten adverse credibility findings against him, which, as already noted, were based on many different issues with the applicant's testimony and evidence. In that wider perspective, I conclude that the translation errors were not sufficiently consequential to undermine the RPD's overall decision: see *Paulo*, at para 34. There were simply too many other credibility concerns arising from the applicant's evidence to conclude that these interpretation errors, and the exchanges that followed them, should vitiate the RPD's entire decision: *Canada (Minister of Citizenship and Immigration) v Patel*, 2002 FCA 55, at para 12; *Abraham v Canada (Attorney General)*, 2016 FC 390, at para 18. See also *Roy v Canada (Citizenship and Immigration)*, 2013 FC 768 at para 34, and *Hassani v Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 FCR 501, at para 40, both referring to *Mobil Oil Canada Ltd v Canada-Newfoundland Offshore Petroleum Board*, [1994] 1 SCR 202, at p. 228.

[55] I am aware that in some hearings, there appear to be singular events, moments, or answers to questions on which the outcome of the case seems to turn. The applicant did not submit that these two translation errors had that effect and, from the record before the Court, it does not appear that this was one of those rare moments.

[56] For these reasons, I conclude that the applicant has not shown that the RPD deprived him of procedural fairness due to inadequate translation.

B. ***Was the RPD's decision unreasonable?***

[57] On a judicial review application, the standard of review is reasonableness, as described in *Vavilov*. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15.

[58] It is not the Court's role to determine whether the RPD came to the correct decision or whether it agrees with its reasoning on the merits of the applicant's claim.

[59] The Court's review starts with the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record: *Vavilov*, at paras 84, 91-96, 97, and 103; *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, at paras 28-33. The Court's review considers both the reasoning process and the outcome: *Vavilov*, at paras 83 and 86. A reasonable decision is one that is based on an internally coherent and a rational chain of analysis and is justified in relation to the facts and law that constrain the decision maker: *Vavilov*, esp. at paras 85, 99, 101, 105-106 and 194. See also *Entertainment*

Software Association v Society of Composers, Authors and Music Publishers of Canada, 2020 FCA 100, at paras 24-35.

[60] The applicant raised a large number of arguments to support his position that the RPD's decision was unreasonable. Grouping like arguments together for judicial review purposes, I find that the applicant's submissions were that:

1) The RPD erred in law when it failed to do a state protection analysis and failed to assess the risk faced by the applicant in Colombia; and
2) The RPD failed to respect the factual constraints in the evidence, specifically because it:
    a) ignored evidence that was contrary to its conclusions;
    b) did not properly consider evidence that supported the applicant's claims; and
    c) based its decision on details and a microscopic review of the evidence.

[61] I will address each argument in turn.

(1) Did the RPD err by failing to conduct necessary analyses, including state protection and the risk faced by the applicant in Colombia?

[62] The applicant submitted that his allegations and the threats made against him required the RPD to assess the adequacy and availability of state protection in his particular circumstances under section 96 of the *IRPA*. Similarly, the applicant contended that, despite the negative credibility findings made by the RPD, the applicant's identity as a social activist who worked

helping the poorest communes of his city triggered a requirement for a proper risk analysis under *IRPA* subsection 97(1) that took into account his individual circumstances.

[63] These two arguments do not succeed. The Federal Court of Appeal concluded in *Sellan* that when the RPD makes a general finding that a claimant lacks credibility, that determination is "sufficient to dispose of the claim" unless there is independent and credible documentary evidence in the record capable of supporting a positive disposition of the claim. The claimant bears the onus to demonstrate that there was such evidence: *Canada (Citizenship and Immigration) v Sellan*, 2008 FCA 381, 2008 FCA 381, at para 3.

[64] The applicant submitted that he was targeted because of his position and circumstances and that his fear did not pertain to random acts of violence. However, the RPD did not believe the applicant's testimony about his problems with the Urabeños in Colombia and did not accept that any of the events on which his claim was based, actually occurred. On this application, the applicant did not identify independent and credible documents in the record that were capable of supporting his claims. In my view, it was therefore unnecessary to consider state protection or the applicant's section 97 claim: *Santha v Canada (Citizenship and Immigration)*, 2021 FC 1353, at paras 59-60; *Huseynov v Canada (Citizenship and Immigration)*, 2019 FC 1392, at paras 18-21.

(2) Did the RPD fail to respect the factual constraints in the evidence?

[65] A reasonable decision one that is justified in relation to the facts that constrained the decision maker. This Court may intervene to set aside the RPD's decision if it fundamentally

misapprehended the evidence, or ignored or failed to account for critical evidence in the record that runs counter to the conclusion: *Vavilov*, at paras 101 and 125-126; *Canada (Attorney General) v Best Buy Canada Ltd.*, 2021 FCA 161, at paras 122-123 (quoting *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)* (1998), [1999] 1 FC 53, at paras 14-17); *Federal Courts Act*, paragraph 18.1(4)(*d*).

(a) *Did the RPD ignore evidence that was contrary to its conclusions?*

[66] The applicant submitted that the RPD reached conclusions without referring to letters from four witnesses submitted by the applicant that, according to the applicant, expressly corroborated events described in the applicant's testimony. The applicant submitted that the RPD failed to address this evidence, which was contrary to its final conclusion, citing the principle in *Cepeda-Gutierrez*. The applicant submitted that the RPD failed to consider all the evidence in the record.

[67] I do not agree. As the respondent observed, the RPD did not entirely ignore the documentary evidence. It found, at paragraph 129, that in light of the numerous and significant credibility concerns outlined above, the panel attached "little or no weight to the other supporting documentation provided" by the applicant, including an alleged threatening note from the agents of persecution, letters from his mother and brother, a letter from an alleged security guard, and two general letters of recommendation. The RPD found that they were not capable of outweighing the important and numerous negative credibility inferences it made. Because it had made numerous negative credibility findings on central elements of the applicant's claim, it was open to the RPD to decide to give little or no weight to the additional supporting documents he

identified: *Olajide v Canada (Citizenship and Immigration)*, 2021 FC 197, at para 15; *Lawani v Canada (Citizenship and Immigration)*, 2018 FC 924, at para 24.

[68] The RPD therefore did not make a reviewable error as alleged by the applicant.

(b) *Did the RPD fail to properly consider evidence that supported the applicant's claims?*

[69] The applicant pointed to numerous pieces of evidence that were not considered in the RPD's reasons. For example, he submitted that the RPD disregarded his conservative Christian background when it evaluated why he continued with the process of spousal sponsorship, despite the breakdown of his marriage in late July 2018. The applicant also submitted that the RPD failed to understand the photograph of his father, to which it gave no weight. The applicant explained that his father was the founder of the charitable organization. The photograph corroborated his testimony because he was not volunteering for the organization when it was founded.

[70] In my view, these arguments cannot succeed. The RPD was entitled to accept and rely upon some evidence and to decide not to rely on other evidence. That is part of the fact–finding process inherent in the RPD's role as initial decision-maker on refugee claims. This Court is not permitted to usurp that function by reassessing or reweighing the evidence on this judicial review application: *Vavilov*, at para 126.

(c) *Did the RPD base its decision on details and a microscopic review of the evidence?*

[71] The applicant submitted that the RPD's credibility findings were unreasonable because they were based on an improper microscopic reading of his spousal sponsorship application and his BOC narrative. He submitted that the RPD ignored his testimony in relation to those documents, and attempted to shift responsibility for the narrative onto his former wife and an immigration consultant.

[72] In my view, the RPD committed no reviewable error. I have read the RPD's reasons carefully. In 141 paragraphs, it considered and weighed the applicant's claims as provided in his BOC narrative and his testimony. It found significant omissions in his BOC narrative. It found that he took a step to continue his application for permanent residence sponsored by his spouse when he knew his marriage was over. It did not believe his claim that a pristine letter he allegedly carried around Colombia in his briefcase would deter the violence against him by the alleged agents of persecution. It did not believe his explanation for a five-year delay in claiming refugee status in Canada. The applicant's submissions have not persuaded me that, in reaching these conclusions, the RPD ignored material evidence in favour of tiny irrelevant or peripheral details. See, similarly, *Ahmed v Canada (Citizenship and Immigration)*, 2021 FC 793, at paras 33-40; *Paulo*, at paras 56, 59-61; *Adeleye v Canada (Citizenship and Immigration)*, 2022 FC 81, at paras 26-31; *Garcia Serrano v Canada (Citizenship and Immigration)*, 2022 FC 153, at paras 23-26; *Chen v Canada (Citizenship and Immigration)*, 2021 FC 1332, at paras 9, 12; *Wang v Canada (Citizenship and Immigration)*, 2019 FC 978, at paras 18, 36-38; *Shi v Canada (Citizenship and Immigration)*, 2022 FC 196, at paras 53-54.

[73] For these reasons, the applicant has not demonstrated that the RPD's decision was unreasonable, applying the principles in *Vavilov*.

V. Conclusion

[74] The application is therefore dismissed. Neither party proposed a serious question to certify for appeal.

JUDGMENT in IMM-935-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No question is certified under paragraph 74(*d*) of the *Immigration and Refugee Protection Act*.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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APPEARANCES:

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