

Federal Court



Cour fédérale

Date: 20220624

Docket: IMM-5820-21

Citation: 2022 FC 956

Ottawa, Ontario, June 24, 2022

PRESENT: The Honourable Mr. Justice Pamel

BETWEEN:

JUAN ALFONSO GARCIA CORRALES

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Mr. Juan Alfonso Garcia Corrales, is a 38-year-old citizen of Mexico claiming a fear of persecution based on his sexual orientation and as a member of a particular social group because of his relationship with a Mexican journalist. He seeks judicial review of a decision of the Refugee Appeal Division [RAD] dated July 28, 2021, confirming an earlier decision of the Refugee Protection Division [RPD] dated January 6, 2021, that found that

Mr. Garcia Corrales had not established, on a balance of probabilities, the material elements of his claim. The RAD found inconsistencies and contradictions between Mr. Garcia Corrales's original Basis of Claim [BOC], his addendum to his narrative [amended BOC] and his testimony about key facts at the heart of his claim; the supporting documents he provided did not overcome these credibility concerns.

[2] I find nothing unreasonable in the RAD's analysis and in its assessment of the evidence, and for the reasons that follow, I would dismiss the application for judicial review.

II. Background and underlying tribunal decisions

[3] Mr. Garcia Corrales is a gay man from Veracruz, Mexico who arrived in Canada on January 19, 2019, and claimed refugee protection on February 12, 2019. In his BOC – filled out without the assistance of counsel – Mr. Garcia Corrales claims that his family rejected him because of his sexual orientation, that he faced discrimination in his workplace, and that he lived in fear because of the generalized violence aimed at homosexuals in Mexico, with little if any willingness on the part of the police to protect gay men from such violence. He claims that in 2011, his employer dismissed him because of his sexual orientation; he then decided to move to Mexico City, but still feared being the target of violence without recourse to police protection. In 2017, Mr. Garcia Corrales moved to Querétaro City for a job opportunity. He claims that everything seemed fine for two years, but that he still faced discrimination and did not feel safe because of his sexual orientation.

[4] On March 13, 2020, and after retaining counsel, Mr. Garcia Corrales filed an amended BOC to expand upon his earlier submissions regarding the discrimination that he experienced all his life, the bullying from other children and the rejection of his family. He also added in his amended BOC that he was targeted by organized crime because of his relationship with Francisco Xavier Mortera, a gay journalist whom he met in 2018 in Veracruz. According to Mr. Garcia Corrales, Mr. Mortera told him in October 2018 that he had been receiving threats for months from a criminal organization on account of his work as a journalist. Although Mr. Mortera said that the local police were protecting him, he suggested to Mr. Garcia Corrales not to visit him in Veracruz for a while; they met in Querétaro City or Mexico City instead. In December 2018, Mr. Garcia Corrales travelled back to Veracruz to celebrate Christmas, but Mr. Mortera received a telephone call in which individuals threatened to hurt Mr. Garcia Corrales if he, Mr. Mortera, did not stop publishing certain news articles. Mr. Mortera suspected that the police officers who were supposed to be protecting him were the ones giving information to this criminal organization; he asked the police to replace the officers, but this caused the authorities to discontinue police protection altogether. Mr. Garcia Corrales returned to Querétaro City, but Mr. Mortera continued to receive telephone calls in the days that followed, in which individuals threatened Mr. Garcia Corrales and indicated that they knew where Mr. Garcia Corrales lived and where he worked.

[5] As stated earlier, seeking safety, Mr. Garcia Corrales left Mexico for Canada in January 2019 and entered Canada on a visitor visa issued about 15 months earlier, in October 2017. He claimed refugee protection on February 12, 2019, asserting that he did not seek protection immediately upon entering Canada because he was hoping for Mr. Mortera to join him.

[6] The RPD rejected Mr. Garcia Corrales's claim on the basis of credibility. The RPD accepted that Mr. Garcia Corrales is a homosexual man but found that he had failed to (1) provide sufficient credible or trustworthy evidence to establish that he is in need of refugee protection by reason of his sexual orientation, (2) establish a nexus to a particular social group as a family member of a journalist, or (3) establish that he was targeted because of his relationship with Mr. Mortera.

[7] More specifically, the RPD drew a negative credibility inference from inconsistencies between Mr. Garcia Corrales's BOC, his amended BOC and his testimony. First, the central aspect of his claim – i.e., that he had a relationship with Mr. Mortera, who was receiving threats targeting Mr. Garcia Corrales – was not mentioned in his BOC. The RPD rejected Mr. Garcia Corrales's explanation that he initially thought that a general description of the events was sufficient to support his claim; the RPD also determined that it would make little sense for Mr. Garcia Corrales to omit to mention, even in a general way, the key element that led to his having to flee Mexico. In addition, the RPD found that the statements in a letter from one of Mr. Garcia Corrales's friends were inconsistent with Mr. Garcia Corrales's amended BOC – the friend stated that he had witnessed Mr. Garcia Corrales himself receiving a threatening telephone call when Mr. Garcia Corrales never mentioned in his amended BOC that he had received direct threats. When the RPD questioned him about this inconsistency, Mr. Garcia Corrales asserted that he had received threatening telephone calls and text messages since October 2018 and had told Mr. Mortera about them. Compounding the RPD's concerns was the fact that Mr. Garcia Corrales did not submit any of the threatening text messages that he received; it would seem that his telephone apparently did not save them. The RPD found this explanation not to be credible.

[8] Moreover, the RPD determined that the assertion that Mr. Garcia Corrales did not report the threats to the police because he was gay was not credible given that Mr. Mortera, purportedly also a gay man, was under police protection. Mr. Garcia Corrales also testified that Mr. Mortera was still under police protection, contradicting his amended BOC, in which he stated that the police ceased his protection altogether. Confronted with this contradiction, Mr. Garcia Corrales attempted to explain that the police protection had ceased but was then reinstated. The RPD found that Mr. Garcia Corrales's testimony was evolving with each question so that he could find an answer that could remedy the deficiencies in his evidence.

[9] In addition, the RPD found that the evidence of the relationship between Mr. Mortera and Mr. Garcia Corrales was insufficient to show that the relationship came within the scope of a family so as to allow Mr. Garcia Corrales to be a member of a particular social group seeking protection. Mr. Mortera states in his letter submitted to the RPD that he and Mr. Garcia Corrales knew each other for more than 10 years, which was a "beautiful friendship, which later became a very important romantic relationship", but that they "decided to have a solid friendship, leaving ... the opportunity to act freely in each of [their] respective lives" because Mr. Garcia Corrales had work opportunities that led him to reside in another state. Moreover, the RPD noted that Mr. Mortera did not mention in his letter any death threats made by members of a criminal organization against Mr. Garcia Corrales.

[10] On the basis of its negative credibility findings, the RPD determined that there was no substance to the assertion that Mr. Garcia Corrales would be harmed by a criminal organization upon his return to Mexico and noted, in particular, that the agent of persecution remained

unidentified. The RPD also gave no probative value to the other letters of support from Mr. Garcia Corrales' friends as they were insufficient to remedy the negative credibility findings that it made. Finally, the RPD considered the country conditions in Mexico for homosexual men but found that Mr. Garcia Corrales did not establish through credible evidence that he personally faced a serious possibility of persecution or a risk. The discrimination he faced did not cumulatively constitute persecution, and although the RPD acknowledged that journalists in Mexico are at risk, Mr. Garcia Corrales did not provide credible evidence to establish that he was targeted because of his friendship with Mr. Mortera or that Mr. Mortera himself was targeted.

[11] In a decision dated July 28, 2021, the RAD found that the RPD was correct in finding that Mr. Garcia Corrales' claim was not credible. Before the RAD, amongst other arguments, Mr. Garcia Corrales argued that the RPD's attitude toward him regarding his efforts to seek state protection failed to observe the Immigration and Refugee Board of Canada's *Guideline 9: Proceedings Before the IRB Involving Sexual Orientation, Gender Identity and Expression* [SOGIE Guidelines] – I should mention that the title to Guideline 9 has since been expanded to include Sex Characteristics and the acronym is now SOGIESC. Mr. Garcia Corrales testified that Mr. Mortera was under police protection and that Mr. Mortera stated in his letter that he and Mr. Garcia Corrales once alerted the police when they were verbally abused at a restaurant in August 2018. Accordingly, the RAD found that the RPD's questioning during the hearing as to why Mr. Garcia Corrales did not report the death threats to the police did not disrespect the SOGIE Guidelines.

[12] The RAD found that the RPD also did not err in its credibility assessment in identifying inconsistencies that went to the core of Mr. Garcia Corrales's claim. Although the fact that Mr. Garcia Corrales did not initially have counsel at the time could explain part of the inconsistencies between his BOC and his amended BOC, the RAD noted that the RPD identified further inconsistencies between his amended BOC and his testimony at a time when counsel was present, which supported a finding of a lack of credibility. In any event, the shift in Mr. Garcia Corrales's narrative as to the underlying fear causing him to flee Mexico was not satisfactorily explained. Therefore, the RAD found that the RPD's credibility assessment was not, as asserted by Mr. Garcia Corrales, overly vigilant and microscopic and that the inconsistencies that were noted did indeed undermine Mr. Garcia Corrales's credibility. In addition, and after examining the hearing transcript, the RAD found that the RPD's questioning was not confusing or inappropriate and that Mr. Garcia Corrales did provide confusing replies.

[13] Moreover, the RAD found that the RPD did not err in asking Mr. Garcia Corrales to identify the agent of persecution as Mr. Garcia Corrales provided scant details regarding who made the threats against him and why; Mr. Garcia Corrales clearly had the burden of establishing his claim through sufficient credible evidence. The RAD also determined that the RPD did not err in its analysis of Mr. Garcia Corrales's membership in a particular social group as a member of the family of Mr. Mortera in view of the statements found in Mr. Mortera's own letter.

[14] The RAD also found that the RPD did not err in determining that the corroborating evidence lacked probative value. The RAD independently examined the evidence – letters written by Mr. Garcia Corrales's friends – and found that they did not provide sufficient details

to establish the central elements of Mr. Garcia Corrales's claim. Finally, the RAD agreed with the RPD that Mr. Garcia Corrales would not face a serious possibility of persecution because of his homosexuality if he returned to Mexico as the objective documentary evidence did not establish that the discrimination faced by homosexuals in Mexico rose to the level of persecution.

III. Issue and standard of review

[15] The sole issue in the application for judicial review is whether the RAD's decision is reasonable. The parties submit, and I agree, that the applicable standard of review in assessing the merits of the RAD's decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 16-17 [*Vavilov*]; *Jayasinghe Arachchige v Canada (Citizenship and Immigration)*, 2020 FC 509 at paras 28-30). Reasonableness is concerned with the existence of justification, transparency and intelligibility in the reasoning process of the decision maker (*Vavilov* at para 99). The Court must refrain from "reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125, citing *Canada (Canadian Human Rights Commission) v Canada (Attorney General)*, 2018 SCC 31 at para 55).

IV. Analysis

A. *The RAD did not make unreasonable credibility findings*

[16] Mr. Garcia Corrales submits that the RAD erred in finding inconsistencies between his BOC and his amended BOC as he was not represented by counsel when he filled out his original BOC; he also submits that the allegations in his amended BOC were simply an extension of his

original BOC and that the failure to mention in the original BOC his relationship with Mr. Mortera and the fact that Mr. Garcia Corrales had fled Mexico because of death threats was simply “a minor inconsistency”. I am not convinced that such omissions are, as Mr. Garcia Corrales argues, due to memory failures. Also, this is not a situation where the RAD failed to explain, by reference to the evidence, the reasons why the different versions of Mr. Garcia Corrales’ evidence are incompatible and why these inconsistencies deprived him of his credibility (see for example *Shah v Canada (Minister of Citizenship and Immigration)*, 2006 FC 627 at para 26). Nor is this a case where the versions of the evidence were not so different so as to call Mr. Garcia Corrales’ credibility into question (see for example *Hyka v Canada (Minister of Citizenship and Immigration)*, 2005 FC 220 at para 15); here they were “so different”.

[17] In this case, the underpinning of the fear of persecution shifted from how dangerous Mexico is for gay men in general – with evidence of discrimination in employment and social attitudes – to Mr. Garcia Corrales being personally threatened by unknown and unidentified criminals associated with organized crime on account of his relationship with a journalist. I can hardly describe this shift as a simple expansion along the same theme or as an extension of an original narrative. The fact that Mr. Mortera is also gay is but a mere coincidence as the evidence states that he was purportedly being targeted because of his work as a journalist.

[18] The RAD agreed with the RPD regarding the significant differences between Mr. Garcia Corrales’ narratives and eventually his testimony, and clearly explained by referencing the evidence the reasons why the narratives and testimony were incompatible and why these

inconsistencies undermined his credibility. According to the RAD, these inconsistencies went to the core of Mr. Garcia Corrales' claim, and I see nothing unreasonable with such a finding.

[19] Mr. Garcia Corrales further argues that although some of his testimony was confusing, he provided clarifications for the timeline of the threats that he and Mr. Mortera received and that the RAD unreasonably determined that his testimony was confusing even though he mentioned numerous times that he did not understand the questions being asked. I do not agree with Mr. Garcia Corrales that the RAD unreasonably held his confusing testimony against him. The RPD questioned Mr. Garcia Corrales about the threatening telephone calls and text messages he testified that he received – although he omitted to include them in his original and amended BOC. I have not been persuaded that the RPD failed to allow him to clarify his earlier contradictory statements. Where a refugee claimant fails to mention important facts in his or her BOC, this may legitimately be considered to be an omission that goes to lack of credibility (*Grinevich v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No. 444 (QL) at para 4). Moreover, reading the relevant passages, I also see nothing wrong in the finding that Mr. Garcia Corrales' testimony evolved in an effort to explain away such inconsistencies.

[20] Before me, Mr. Garcia Corrales also argues that it was not reasonable for the RPD to take issue with the fact that his telephone did not save his text messages; in his testimony, he initially stated that his telephone was decommissioned and that his messages were erased, but as questioning on this issue continued, he seemed to suggest that his telephone never stored his text messages. Having reviewed the testimony, I cannot fault the RPD for finding that Mr. Garcia Corrales' explanation for not producing the supposed threatening text messages was not credible.

One would think that saving the evidence of persecution once Mr. Garcia Corrales arrived in Canada and submitted his claim for protection – which at that point was only two months following the alleged text threats – would have been the first thing he would do. In any event, the issue was not taken up by the RAD. As to Mr. Garcia Corrales taking issue with the RPD asking him about the availability of police protection in Mexico, after reviewing the hearing transcript, the RAD found that the RPD’s questioning was not confusing or inappropriate. I see nothing unreasonable in the RAD’s conclusion.

[21] Finally, Mr. Garcia Corrales asserts that the RAD erred by considering his failure to identify the agents of persecution in its assessment of his credibility, arguing that a claimant does not need to identify the agents of persecution to succeed on a claim under section 96 of the *Immigration and Refugee Protection Act*, SC 2001, c 27. I agree. However, Mr. Garcia Corrales nonetheless had the burden to establish through sufficient credible evidence that he faces a serious possibility of persecution under section 96. The RAD found that he provided scant details regarding who made the threats against him and why; it is not just a question of not having identified the purported agents of persecution, but also a failure to establish the basis of his fear. In any event, it is not the role of this Court to reweigh the evidence and interfere with the RAD’s conclusion (*Vavilov* at para 125; *Li v Canada (Citizenship and Immigration)*, 2020 FC 783 at para 41), and I see nothing unreasonable with the RAD’s conclusion.

B. *The RAD did not err in finding that the applicant was not a member of a particular social group*

[22] The RAD agreed with the RPD and found that Mr. Garcia Corrales was not a member of a particular social group as a member of the family of a journalist. Mr. Garcia Corrales submits

that this analysis is flawed as the RAD unreasonably expected him to provide irrelevant details about his marriage plans and misinterpreted the letter provided by Mr. Mortera. Before me, he argues that not all gay men make their marriage plans public. That may be so, but if there were any marriage plans, I can hardly accept that such plans would be irrelevant when the very basis of Mr. Garcia Corrales' claim for protection was his purported family relationship with Mr. Mortera. The fact that no mention of any such plans is found in Mr. Mortera's letter is also troubling. A "solid friendship" does not establish that Mr. Garcia Corrales and Mr. Mortera's relationship amounted to a familial relationship, and Mr. Garcia Corrales produced no evidence about their purported engagement. In the end, Mr. Garcia Corrales is asking this Court to reweigh the evidence. I see nothing unreasonable in the RAD's conclusion.

C. *The RAD did not err by not considering corroborating evidence*

[23] Although he concedes that the RAD fully reviewed the letters from his friends, Mr. Garcia Corrales further submits that the RAD unreasonably concurred with the RPD's findings when the RAD failed to consider his friends' letters, and "fell into the common trap of discounting evidence for what it does not say" (citing *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at para 49). I disagree. The RAD found that the RPD considered the corroborating evidence and proceeded to independently assess the letters. The RAD found that although the letters adduced into evidence by Mr. Garcia Corrales refer to some of the issues he raised, they did not establish central elements of his claim. The RAD did not discount the letters but took them at face value. They could not overcome the credibility issues arising from the inconsistencies found in Mr. Garcia Corrales' original BOC, his amended BOC and his testimony. I have not been convinced that such a finding is unreasonable.

D. *The RAD did not err in finding that the applicant did not face a serious possibility of persecution as a homosexual man in Mexico*

[24] Mr. Garcia Corrales argues that the RAD omitted to consider objective documentary evidence found in the National Documentation Package [NDP]; he also relies upon this Court's decision in *Ramirez Cueto v Canada (Citizenship and Immigration)*, 2021 FC 954, in which Justice Heneghan found that the RAD failed to address evidence that was accepted by the RAD in another case involving sexual orientation. However, in this case, such "other evidence" was not put before the RAD, and the RAD was therefore not required to comment on it. In any event, I find that the RAD reasonably determined that the country condition evidence found in the NDP did not establish that Mr. Garcia Corrales would face persecution in Mexico based on his sexual orientation. The RAD found that the documentation on which Mr. Garcia Corrales relies does not establish that discrimination faced by homosexuals in Mexico amounts to persecution, and I have not been convinced that such a finding is unreasonable.

V. Conclusion

[25] I would dismiss the application for judicial review.

JUDGMENT in IMM-5820-21

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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