

Federal Court



Cour fédérale

**Date: 20230217**

**Docket: IMM-9562-21**

**Citation: 2023 FC 235**

**Ottawa, Ontario, February 17, 2023**

**PRESENT: The Associate Chief Justice Gagné**

**BETWEEN:**

**DIEGO EDISSON NARANJO MORENO**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

[1] Mr. Diego Edisson Naranjo Moreno is a Colombian citizen who sought refuge in Canada in April 2019. He feared harm at the hands of a man believed to be a FARC [Revolutionary Armed Forces of Columbia] member, who had allegedly threatened him for having reported him for shoplifting several years before. The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] both refused his refugee claim.

[2] The Applicant seeks judicial review of the RAD's decision, arguing it was unreasonable and procedurally unfair. He brings forth many arguments in an attempt to convince the Court that

the RAD erred in its credibility findings, none of which convinces me that the decision is not reasonable.

I. Facts

[2] The Applicant states that in 2011, he worked as a security guard in Bogota, Colombia. As part of his duties, he reported a man for shoplifting. The police told him that this man had an extensive criminal record and was wanted for being part of the FARC. The police transported the Applicant and the man together in the same vehicle; it is during this drive that the Applicant says the man threatened him and his family.

[3] Seven years later, in February or March 2018 (the exact date will be discussed later), the Applicant – now working as a debt collector – was confronted and threatened by the same man he had reported in 2011. The Applicant reported this incident to the prosecutor’s office and made a denunciation.

[4] For the following month, the Applicant received daily phone threats from a caller who told him that the FARC would kill his family members. The prosecutor’s office recommended that the Applicant not change his phone number so they could see a record of the calls. After almost a month, he nevertheless changed it and stopped receiving threats by phone.

[5] On January 22, 2019, the Applicant and his spouse found a threatening letter under their apartment door. It was similar to a death certificate and had the Applicant’s name on it. The

prosecutor's office advised the family to leave their apartment because the FARC were known to follow through with their threats. The police said they would patrol their area, but failed to do so.

[6] In January 2019, the Applicant travelled to the United States and then entered Canada outside a recognized port of entry in April 2019, and filed his refugee claim.

## II. Decision under review

[7] The RPD found that the Applicant and his family were neither Convention refugees nor persons in need of protection. The RAD summarized the RPD's findings in its decision:

The RPD found the Appellant's credibility was undermined by discrepancies within the evidence, vague testimony, and a failure to try to obtain details of the 2011 shoplifting report. After considering the supporting documentation, the RPD found the claimants failed to present reliable and credible evidence to support the allegations which form the basis of their claims, on a balance of probabilities. [RAD's Decision at para 7]

[8] Since the rest of his family did not have a right of appeal, the Applicant was the only appellant before the RAD. The RAD agreed with the RPD that several areas of his evidence raised credibility concerns and dismissed his appeal. In so doing, the RAD found the Applicant had failed to provide sufficient, credible, and reliable evidence to establish both the 2011 and 2018 incidents.

[9] With regard to the 2011 incident, the RAD found that the Applicant's vague testimony about it and failure to corroborate his story by getting more details about it or the FARC member, bring his allegations into doubt.

[10] Turning to the 2018 incident, the RAD first addressed the RPD's not having accepted the Applicant's explanation for why he changed a key date in his Basis of Claim [BOC] narrative. His narrative originally stated that the date of the incident was March 12, 2018, but he amended this prior to the RPD hearing to February 10, 2018. The RAD found that the change was not reasonably explainable by an interpretation error as the Applicant claimed, since this would have involved an interpreter mistaking both the month and date.

[11] Noting that the RPD had highlighted further discrepancies between the Applicant's Basis of Claim narrative and the denunciation he gave to the prosecutor's office, the RAD's decision described four significant differences between the two accounts. These were: (1) when the Applicant reported the threat to the prosecutor's office; (2) whether he was working or with his daughter when he was threatened; (3) how the incident ended; and (4) whether he had mentioned that the man belonged to the FARC.

[12] Finally, though the RAD agreed the RPD failed to consider the Applicant's spouse's evidence as corroboration of the Applicant's claim, the RAD gave the spouse's evidence no weight in relation to the Applicant's two core allegations, as it found that the spouse's supporting documentation did not provide specific information to corroborate the two core events/allegations of his refugee claim.

III. Issues and Standard of Review

[13] This Application for judicial review raises the following issues:

- A. *Did the RAD err in its credibility findings?*
- B. *Did the RAD breach procedural fairness by not allowing the Applicant to address its credibility concerns?*

[14] I agree with the parties that the standard of review applicable to the merits of the RAD's decision is that of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65).

[15] That said, if this case were to raise a true question of procedural fairness (which will be discussed later), it would engage a reviewing exercise akin to review on the correctness standard (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

IV. Analysis

- A. *Did the RAD err in its credibility findings?*

[16] The Applicant's submissions regarding the RAD's credibility findings focus on four elements: (1) the corroborative evidence; (2) the inconsistent date of the 2018 event; (3) the discrepancies between the BOC narrative and the denunciation as it pertains to the 2018 event; and (4) the Applicant's spouse's evidence.

[17] The Respondent submits that the Applicant has not established that the decision is unreasonable, having failed to show any obvious or fatal flaws, erroneous findings of fact, or internal incoherence.

[18] I will address each of the Applicant's arguments in turn.

(1) The corroborative evidence

[19] The Applicant argues that it was unreasonable for the RAD to require corroborative evidence to substantiate his claim, given the presumption established in *Maldonado* that sworn testimony is true unless there is a reason to doubt its truthfulness (*Maldonado v Canada (Minister of Employment and Immigration)* (1979), [1980] 2 FC 302 (CA)). The Applicant submits that the RAD did not identify a "reason to doubt" and incorrectly relied on the fact that the Applicant had not filed corroborative evidence as itself being a reason to disbelieve his sworn evidence.

[20] However, I agree with the Respondent's submissions that the RAD in this case *had* raised reasons to doubt, specifically concerning the 2011 incident. The RAD's reasons stated:

"...I find the Appellant's vague testimony on the incident, and his failure to get more detail about the FARC member in order to corroborate his story bring this allegation into doubt." [RAD's reasons, at para 17, emphasis added]

[21] Further, a distinction regarding the *Maldonado* presumption can be drawn in cases where a claimant has the opportunity to gather corroborative evidence before or after arriving in Canada (*Lunda v Canada (Citizenship and Immigration)*, 2020 FC 704 at para 31). The Applicant falls

into this category, as he did have such an opportunity after arriving in Canada. He obtained a letter of support from his former employer, which mentioned that he identified and apprehended suspected shoplifters. The RAD took note that the letters offered no information on the 2011 incident. In such a context, the strength of the presumption of truthfulness is weakened by the lack of corroborative evidence. As Justice Gascon describes in *Lunda*:

...In cases where a claimant has the opportunity to gather corroborative evidence before or after arriving in Canada, the strength of the presumption of truthfulness may depend directly on the extent to which corroborative evidence is provided.

[...]

Similarly, where corroborative evidence should reasonably be available to establish the essential elements of a claim for refugee protection and there is no reasonable explanation for its absence, the administrative decision maker may make an adverse credibility finding based on the claimant's lack of effort to obtain such evidence. (citations omitted, emphasis added)

[*Lunda* at para 31].

[22] Given the RAD had expressed doubts and considered the Applicant's corroborative evidence only to find it lacking with regard to main aspects of his claim, I find it was reasonable for the RAD to have reached the conclusion it did regarding the credibility of the Applicant's claim.

(2) The inconsistent date of the 2018 event

[23] The 2018 event was first noted as having occurred on March 12 in the BOC narrative. It was amended almost two years later to February 10. The Applicant argues that the RAD needed to know more about the interpreter's abilities before making a conclusion as to what types of

mistakes they might make. Finally, he argues the exact date of the incident is only peripheral to his claim.

[24] Again, I disagree with the Applicant. It is not the RAD's duty to find an explanation for errors and inconsistencies found in an Applicant's material. It was open for the RAD to conclude that one translation error is plausible, but that mistaking both the month and day is unlikely.

[25] Additionally, it fell to the Applicant to show that the quality of the interpreter's service was lacking, not on the RAD to presume it was. While the Applicant would have had the ability to explain the errors proactively or after their RPD hearing, he did not. I agree with the Respondent that it is now too late to raise such arguments, taking note that principles regarding the quality of interpretation established in case-law hold that an objection to the quality of translation must be raised at the first reasonable opportunity (*Fisehaye v Canada (CIC)*, 2022 FC 1358 at paras 35-36, citing *Singh v Canada (CIC)* 2010 FC 1161 at para 3). This was not done here.

[26] Finally, I cannot accept the Applicant's argument that this discrepancy is peripheral to his claim. The RAD's finding was that it was more likely that the date was changed to match the date mentioned in the denunciation the Applicant submitted to the prosecutor's office. It found this alone did not lead to a finding that the allegation was not credible, but clearly noted in its reasons at paragraph 30 that the combination of this with other discrepancies led to its finding that the Applicant had failed to establish, on a balance of probabilities, that the 2018 incident occurred.



(3) 2018 events - Discrepancies between the BOC narrative and the denunciation

[27] The Applicant refers to the first three identified discrepancies between the BOC narrative and the denunciation and offers explanations of how these versions could plausibly coexist.

[28] Regarding whether he was working or with his daughter during the February 10, 2018 event, the Applicant states the only reasonable finding would have been that he was working while with his daughter. The Applicant also states that the RAD failed to justify why it rejected his explanations for the different dates he gave for his denunciation to the prosecutor. Finally, the Applicant argues it is not clear and transparent from the reasons how the evidence relating to the different accounts of how the event ended could negatively affect his credibility.

[29] The Applicant's outlining of plausible alternatives to the RAD's factual findings is not sufficient to succeed on judicial review. Plausible, alternative explanations cannot impeach the facts or logic the RAD used as reasoning founding its doubts. It is possible for there to be more than one reasonable answer or determination (*Vavilov* at para 86, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47; see, for example, *Mukhammad v Canada (Citizenship and Immigration)*, 2022 FC 1217 at paras 71–72; *Schulz v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 717 at para 21).

[30] I do not agree with the Applicant that the RAD had failed to express its finding of a lack of credibility sufficiently, clearly. The RAD's reasons are transparent and intelligible because they explain sufficiently the basis for its credibility concerns in relation to the evidence adduced and provided particulars about the inconsistencies in the evidence.

[31] The RAD explained the inconsistencies at paragraphs 27 and 28 of its reasons; these paragraphs are transparent as it pertains to the RAD's concerns about the evidence. In addition, the RAD clearly explains the basis for its credibility concerns in paragraph 30:

While each finding on its own would not lead me to find this allegation not credible, considering the discrepancies, I find the [Applicant] has failed to provide sufficient, credible and reliable evidence to establish, on a balance of probabilities, the February 10, 2018 incident occurred.

(4) Evidence from the Applicant's wife

[32] The Applicant states that the RAD failed to provide reasons for giving no weight to his spouse's evidence. Again, I disagree. The RAD agreed with the Applicant that the RPD failed to assess that evidence as it pertains to the Applicant's claim, and itself went on to consider this evidence. It considered the threats the spouse received in 2019, but found that neither her testimony nor supporting documentation corroborated the Applicant's main allegations. Hence, it explained why it gave this evidence no weight in relation to the Applicant's two core allegations involving the FARC member, and did so in an internally coherent manner (*Vavilov* at para 85).

B. *Did the RAD breach procedural fairness by not allowing the Applicant to address its credibility concerns?*

[33] The Applicant argues in passing that it was unfair for the RAD to draw a negative inference from the fact his denunciation did not mention that the man threatening him was a former FARC member without first giving the Applicant an opportunity to provide an explanation. While this exact issue had not been raised by the RPD, the RPD had already addressed the fact that the Applicant had, in his narrative, claimed to have recognized the man in 2018 immediately [RPD's Reasons at para 13], and discussion of other discrepancies between

the Applicant's narrative and denunciation formed a key part of the RPD's reasons. Given these issues had been raised at the RPD, it was not unreasonable for the RAD to add its own specific observation without seeking further specific submissions on it.

[34] As noted in the RAD's decision, Applicant's counsel did not seek the admission of new evidence and did not request an oral hearing. In any case, the inconsistency did not arise from new evidence but came from evidence on which the RPD had commented; hence the requirements for an oral hearing contained in sections 110(3) and 110(6) of the *Immigration and Refugee Protection Act*, SC 2001 c 27 would most likely not have been met.

[35] Therefore, the Applicant has not convinced me that the process before the RAD was procedurally unfair.

#### V. Conclusion

[36] In my view, the RAD decision bears the hallmarks of reasonableness. The RAD explained in detail why it found that the Applicant had failed to provide sufficient credible evidence of important aspects of his claim and its reasons are internally coherent. The intervention of the Court is not warranted.

[37] The parties have proposed no question of general importance for certification, and no such question arises from the facts of this case.

**JUDGMENT in IMM-9562-21**

**THIS COURT'S JUDGMENT is that:**

1. This Application for judicial review is dismissed;
2. No question of general importance is certified.

“Jocelyne Gagné”  
Associate Chief Justice

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** IMM-9562-21

**STYLE OF CAUSE:** DIEGO EDISSON NARANJO MORENO v MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 22, 2022

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**DATED:** FEBRUARY 17, 2023

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